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# federal register

Wednesday
March 29, 1995

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# Presidential Documents

**Title 3—**

## The President

**Presidential Determination No. 95–17 of March 16, 1995**

## Drawdown of Commodities and Services From the Inventory and Resources of the Department of Defense To Support Activities of the Palestinian Police Force

**Memorandum for the Secretary of State [and] the Secretary of Defense**

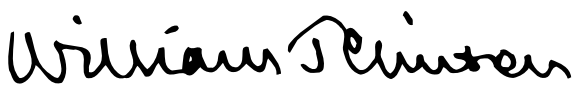
Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the ''Act''), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value not to exceed $5 million to provide and transport 200 vehicles and concurrent spare parts to Israel for use by the Palestinian police force.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.



THE WHITE HOUSE,
*Washington, March 16, 1995.*

[FR Doc. 95–7881
Filed 3–27–95; 3:17 p.m.]
Billing code 4710–10–M

# Rules and Regulations

Federal Register
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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 890

**RIN 3206–AF18**

## Federal Employees Health Benefits Program: Filing Claims; Disputed Claims Procedures and Court Actions

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to revise the requirement that legal actions to recover on a claim under the Federal Employees Health Benefits (FEHB) Program should be brought against the health benefits carrier rather than OPM, and to clarify the procedures for filing claims for payment or service under the FEHB Program. The purpose of these interim regulations is to clarify that if a covered individual chooses to bring legal action pertaining to a denial of an FEHB benefit, such legal action should be brought against OPM, and to clarify the administrative review process that must precede legal action in the courts.

**DATES:** These interim regulations are effective March 29, 1995. Comments must be received on or before May 30, 1995.

**ADDRESSES:** Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or delivery to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sears, (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** Historically, OPM has required that covered individuals who want to bring suit because an FEHB carrier has denied their claim for health benefits must sue the carrier, not OPM. These interim regulations provide that legal actions arising out of a denial of FEHB benefits should be brought against OPM rather than the FEHB carrier that made the initial denial decision. Because OPM has the authority under the FEHB law to order the carrier to pay the claim, OPM has determined it is appropriate under current statute for the covered individual to bring suit against OPM if OPM declines to order the carrier to pay the claim. The interim regulations also clarify the process and circumstances for bringing legal actions under the FEHB Program. They clearly state that the administrative review process set forth in 5 CFR 890.105 must be completed before suit is brought. To further clarify the purpose and intent of these regulations, we have changed the title of the regulation at 890.107 from ''Legal actions'' to ''Court Review.''

The legislative history of § 8902(j), title 5, United States Code, shows that Congress intended OPM (at that time the Civil Service Commission) to provide an administrative appeal process, binding upon the carriers, that would save covered individuals the expense and delay of being forced into the courts to recover on meritorious claims for benefits. Based upon this directive and its central role in the administration of the FEBH Program, OPM established a detailed administrative review process for benefits claims leading to a final decision on such claims by OPM. It is OPM's view that this administrative review process must be followed before legal action is pursued in the courts. Further, the matter to be reviewed by a court upon appeal is the OPM decision affirming the carrier's denial of benefits, with the court's review being limited to an examination of OPM's administrative decision to deny the claim for payment or services.

Health insurance contracts under the FEHB Program are Federal contracts under 5 U.S.C., chapter 89. Accordingly, legal actions concerning disputes arising or relating to those contracts are controlled by Federal, rather than State law. Congress, in the FEHB Act, mandated Federal uniformity for all matters that relate to (1) the nature or extent of coverage; (2) benefits; and (3) payment of benefits under the FEHB Program. By statute, all health insurance contracts require the carrier to agree to pay or provide a health service or supply in an individual case if OPM finds that the covered individual is entitled to the benefit under the terms of the contract. Congress also directed OPM to take a central role in determining whether a health service or supply should be provided in individual cases to covered individuals and, if it should be provided, to require carriers to pay for such health service or supply. These interim regulations reaffirm the principle of uniformity in the FEHB Program by providing that in judicial disputes regarding the denial of a health benefits claim, review is to be limited to the record that was before OPM and that was the basis of the OPM decision to disallow the benefit. In the event that an appropriate court concludes that benefits should have been awarded under the FEBH Act, the court possesses ample authority to require OPM to order that such payments be made to the covered individual from the carrier. These interim regulations clarify that OPM intends for its decision to be upheld unless the court concludes that the OPM decision affirming the carrier's denial of benefits was inconsistent with the standard for a final agency action under applicable Federal law.

The administrative review process is set forth in 15 CFR 890.105, Filing claims for payment or service. Section 890.105 outlines the procedures for filing claims for payment or service when there is a disagreement over payment or service between the carrier and the covered individual. In addition, the regulations make minor changes in the time limits for carrier reconsideration and OPM review of claims in 890.105 to make the language easier to read.

### Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(B) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of rulemaking because these interim regulations remove a restriction on the actions of Federal employees and annuitants.

### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulations primarily affect

individuals enrolled under the Federal Employees Health Benefits Program.

**List of Subjects in 5 CFR Part 890**

Administrative practice and procedure, Government employees Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Reports and recordkeeping requirements, Retirement.

Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM is amending 5 CFR part 890 as follows:

## PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority citation for part 890 continues to read as follows:

**Authority:** 5 U.S.C. 8913; § 890.803 also issued under 50 U.S.C. 403p, 22 U.S.C. 4069c and 4069c–1; subpart L also issued under sec. 599C of Pub. L. 101–513, 104 Stat. 2064, as amended.

2. In § 890.101 paragraph (a) is amended by adding a definition of ''covered individual'' to read as follows:

**§ 890.101 Definitions; time computations.**

(a) * * *

*Covered individual* means an enrollee or a covered family member.

* * * * *

3. Section 890.105 is revised to read as follows:

**§ 890.105 Filing claims for payment or service.**

(a) *General.* Each health benefits carrier resolves claims filed under the plan. All health benefits claims must be submitted initially to the carrier of the claimant's health benefits plan. If the carrier denies a claim (or a portion of a claim), the covered individual may ask the carrier to reconsider its denial. If the carrier affirms its denial or fails to respond as required by paragraph (b) of this section, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the carrier and OPM review processes specified in this section before seeking judicial review of the denied claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 1 year from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the carrier in which to submit a written request for reconsideration to the carrier.

(2) The carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to make a decision on the claim. The carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the carrier's notice requesting additional information. The carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this section if the carrier fails to act within 30 days after the covered individual's request for reconsideration or the carrier's receipt of additional information.

(3) The covered individual may write to OPM and request that OPM review the carrier's decision if the carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within 30 days after the date it receives the request or within 30 days after the date it receives the additional information requested. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this section.

(4) The carrier may extend the time limit for a covered individual's submission of additional information to the carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual must put the request to the carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this section.

(d) *Carrier determinations.* The carrier must provide written notice to the covered individual of its determination. If the carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this section, within 120 days after the date of the covered individual's timely request for reconsideration by the carrier; or

(iii) Within 120 days after the date the carrier requests additional information from the covered individual, or the date the covered individual is notified that the carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the carrier, OPM may:

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the carrier, the carrier must release the information within 30 days after the

date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this section, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the carrier.

4. Section 890.107 is revised to read as follows:

**§ 890.107 Court Review.**

(a) A suit to compel enrollment under § 890.102 of this part must be brought against the employing office that made the enrollment decision.

(b) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(c) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of State statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM. The recovery in such a suit will be limited to the amount of benefits in dispute.

(d) An action under paragraph (c) of this section to recover on a claim for health benefits:

(1) May not be brought prior to exhaustion of the administrative remedies provided in § 890.105;

(2) May not be brought later than December 31 of the 3rd year after the year in which the care or service was provided; and

(3) Will be limited to the record that was before OPM when it rendered its decision affirming the carrier's denial of benefits.

[FR Doc. 95–7793 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Parts 103, 286, and 299

**[INS No. 1312–93]**

**RIN 1115–AB78**

## Establishment of Pilot Programs To Charge a Commuter User Fee at Selected Ports of Entry

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations to implement pilot programs to charge fees for inspection service provided to selected land border Ports-of-Entry (POEs). Limited resources and increasing commuter traffic over the land borders has resulted in costly delays to transborder travelers. Pilot projects, such as the Dedicated Commuter Lanes (DCLs), in which eligible groups may expeditiously enter the United States through designated lanes, will enabled the Service to increase staffing, enhance inspection services, and reduce delays in crossing the border.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Mocny, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., Room 7228, Washington, DC 20536, Telephone (202) 514–3275.

**SUPPLEMENTARY INFORMATION:** Commuter traffic over our land borders has increased significantly each year over the past decade, and in fiscal year 1992 accounted for approximately 90 percent of all inspections completed. At certain locations, traffic backups sometimes last several hours. Such delays are both irritating and costly to the traveling public. Through automation and an increase in the inspection force, the Service could significantly reduce these delays. However, the appropriated funds have not kept up with the rapid growth in land border traffic. Although revenue from the Immigration User Fee Account, authorized by Congress in 1986 and covering commercial air and sea arrivals of POEs, has enabled the Service to more than triple the number of available air and seaport inspectors, these funds may not, by statute, be used to staff land border POEs.

### Provisions of Public Laws 101–515 and 103–121

In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991, Pub. L. 101–515, dated November 5, 1990, Congress included language which allows for pilot programs on the inspection fee concept on the land borders. This law, added as section 286(q) of the Immigration and Naturalization Act (Act), and amended by section 309(a)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. 102–232, dated December 12, 1991, authorizes the Attorney General to establish pilot projects which include the charging of a fee and provides that the fee collected may be used only to enhance inspection services. Pursuant to this law, such pilot projects are to be developed by the Attorney General after consultation with the Secretary of the Treasury and with Congress. All such pilot projects were scheduled to terminate on September 30, 1993, but were extended by Congress until September 30, 1996, by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994 Pub. L. 103–121, dated October 27, 1993. This law also limited these projects only to the northern border of the United States. However, in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1995, Pub. L. 103–317, dated August 28, 1994, Congress authorized the expansion of the commuter lane pilot project to land border crossings in California.

### Discussion of Comments

The Service Published an interim Regulation on May 13, 1991, at 56 FR 21917–21920, amending 8 CFR Parts 103, 286, and 299. In this rule, the Service sought to use DCLs to enhance services to those border crossers who most frequently enter the United States over the land borders. The interim rule also contained a provision for the establishment of a per vehicle user fee at selected POEs. The interim rule included a request for comments by August 12, 1991. The Service received three responses, each discussing several issues.

### Use of Funds

One commenter expressed concern that the revenues generated from the projects will be channeled to the General Fund and not used for the specific purpose of aiding border congestion and delays. The revenues generated by the DCL implementation are controlled by section 286(q) of the Act, which states that such funds will be used to provide land border inspection services. A separate land

Border Inspection Fee Account has been created, and the funds collected must be used in direct support and enhancement of the land border inspections operations, as directed by Congress.

**Concerns About Dedicated Commuter Lanes**

Two commenters expressed concern that many locations on the southern border have severe traffic congestion and that, as many people enroll in the program, the special commuter lanes will become as congested as the regular lanes. If the response to the program were too great for one lane, a second lane could be opened at some locations, since much of the traffic would be removed from the regular lanes. Only by pilot testing this program can the Service determine the efficacy of this approach to expedite traffic and alleviate border congestion. The purpose of the DCL Program is to pre-screen those commuters deemed to be low-risk, so that only a brief examination of the vehicle or personal identifier need be conducted, thereby shortening the time needed for each individual inspection, and expediting the flow of traffic. By removing these commuters from the regular lanes, all traffic moves more quickly. In the test conducted in Blaine, Washington, the commuter lane still expedites traffic, in spite of a large number of enrollees.

The Service is bound by the provisions of Pub. L. 103–121 and cannot consider DCLs on the southern border, except in California, until legislation authorizes us to do so. However, the Service will explore any operational alternatives to further promote facilitation of entry and expeditious primary processing to decrease congestion at affected POEs along the southern border.

One commenter stated that anyone is a potential smuggler and that all who enter the United States along the southern border should face the risk of being searched. The application procedures for enrollment in the DCL Program provides a more thorough screening of DCL users than would normally be conducted were the person crossing through normal traffic lanes. In addition, the regulations provide for random compliance checks of participants and their vehicles at any time during use of the commuter lane.

One commenter expressed concern that there is an element of elitism in the application process for participation in the DCL Program, in that persons with higher incomes will receive special treatment, can better afford the benefit, and will be able to more easily provide adequate background information.

The DCL Program is a strictly voluntary program. Those who feel they cannot afford the fee need not participate and can continue to cross through the regular traffic lanes at no cost. All persons crossing a bridge must pay a bridge toll or fee, regardless of income. The average per-crossing cost for the DCL Program, a program designed for frequent crossers, is significantly lower than that paid to cross most bridges. Based upon both random sampling and local community assessments, the current annual cost of $25.00 per application is not cost prohibitive to the majority of the travelling public.

**Economic Impact of User Fees**

One Commenter objected to the establishment of per vehicle fees as imposing an extra burden on transborder industry and border communities and a barrier to trade. The commenter suggested that with bridge-crossing fees already levied at many points along the southern border, the additional fees would render the crossing too expensive and eventually lead to reduced trade and a decline in the economies of the border communities.

Traffic congestion at the border also costs local communities enormous amounts of revenue in lost time and productivity, as well as severely impacting the environment. The purpose of imposing user fees of this type is to allow the Service to hire more staff and implement technology to aid inspection and expedite traffic.

The section allowing for the establishment of a per vehicle fee has been removed from the final rule. Such a broad-based fee is not consistent with the intent of the legislation of which this regulation is based, which is to establish pilot projects at selected locations.

**Participation in the DCL Program**

The interim rule restricted participation in the DCL Program to citizens of the United States and contiguous countries. One commenter recommended expanding the identified groups eligible to participate in the DCL Program. The suggestion coincided with recommendations made by local officials and current participants in the DCL Program. Accordingly, additional user groups have been added to participate in the DCL Program as follows: third-country aliens who have been lawfully admitted for permanent residence (LAPRs) in the United States and lawful permanent residents (Landed immigrants) in Canada who are citizens of the Commonwealth countries.

Expansion of eligibility to LAPRs of the United States, and landed immigrants of Canada who are citizens of the Commonwealth countries is in keeping with the Immigration and Naturalization Act entry requirements for those travelers who are not required visas to enter into the United States for business or pleasure. Since the restriction on operating a Dedicated Commuter Lane was only recently lifted, and the Service regulates permanent residents of Mexico differently than Canadian permanent residents, further study on whether or not to include permanent residents of Mexico in the DCL program is needed. Inclusion of permanent residents of Mexico may be proposed in future regulation by the Service.

**Additional Changes**

The interim rule contained the criteria that the location selected have an identifiable group of low-risk border crossers who cross a minimum of once weekly for a regular defined purpose. To allow for greater use of the DCL Program and more flexibility for its users, the final rule removes the requirement that the participant enter once weekly.

The interim rule provided that only the District Director could revoke an individual's participation in the DCL program. The final rule extends this authority to the Chief Patrol Agent if the participant violates any of the conditions of the DCL program and is encountered by the Border Patrol outside the POE. This addition to the Rule will enhance control of participation in the DCL program.

Participation in the DCL Program requires the payment of an annual fee for adjudication of the application and issuance of a vehicle and/or personal identifier. The initial DCL in Blaine used a windshield decal to identify a participating vehicle. Diverse types of technology may be introduced and used for rapid vehicle or driver identification, ranging from a simple method involving windshield stickers or similar items, to radio frequency identification tags or various forms of biometrics. Language in the final rule has been modified to allow for the use of other forms of identification technology.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities because of the following factors. The rule applies to individuals, not small

entities, and provides a clear benefit to participants by allowing expeditious passage through a POE. Although there is a fee charged for this service, participation is voluntary.

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, § 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 12612**

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

**Executive Order 12606**

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that is will have no effect on family well-being.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The clearance number for this collection is contained in 8 CFR 299.5, Display of Control Numbers.

**List of Subjects**

*8 CFR Part 103*

Administrative practice and procedures, Aliens, Authority delegations (Government agencies), Freedom of Information, Privacy Act, Reporting and recordkeeping requirements.

*8 CFR Part 286*

Fees, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 299*

Administrative practice and procedure, Aliens, Forms, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule which was published on May 13, 1991, at 56 FR 21917–21920 amending 8 CFR parts 103, 286, and 299 is adopted as a final rule with the following changes:

## PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.8 is amended by:

a. Revising paragraph (b)(1)(i);

b. Removing the word ''and'' at the end of the sentence of paragraph (b)(1)(ii);

c. Removing the ''.'' at the end of paragraph (b)(1)(iii), and replacing it with a ''; and'';

d. Adding paragraph (b)(1)(iv);

e. Revising paragraph (b)(2)(i) through (v);

f. Adding paragraph (b)(2)(vi);

g. Revising paragraph (b)(4)(iii);

h. Revising paragraph (b)(6);

i. Revising paragraph (b)(7); and by

j. Removing paragraph (c), to read as follows:

**§ 286.8 Establishment of pilot programs for the charging of a land border user fee for inspection services.**

* * * * *

(b) * * *

(1) * * *

(i) The location has an identifiable group of low-risk frequent border crossers;

* * * * *

(iv) The port of entry is located on the northern or the California border of the United States.

(2) * * *

(i) The applicant is a citizen of the United States or a citizen of the country contiguous to the specific port of entry sponsoring the commuter lane program in which the applicant seeks to participate; or, the applicant is a national or citizen of a third-country who has been lawfully admitted for permanent residence (LAPR) in the United States; or, the applicant is a lawful permanent resident (landed immigrant) of Canada who is a citizen of the Commonwealth countries;

(ii) The applicant who is not a United States citizen must be otherwise admissible to the United States and must be in possession of any documents required under § 212.1 of this chapter for entry to the United States whenever using the dedicated commuter lane;

(iii) The applicant agrees to furnish all information requested on the application, Form I–823, Application—Dedicated Commuter Lane Program;

(iv) The applicant pays the required fee, upon approval of the application;

(v) The applicant agrees to a physical inspection of the registered vehicle prior to initial use of the dedicated commuter lane; and

(vi) When entering through a dedicated commuter lane, each applicant must be in possession of any authorization document or documents issued for use of the dedicated commuter lane.

* * * * *

(4) * * *

(iii) Applications for participation in the dedicated commuter lane program must be submitted annually at a port of entry having a dedicated commuter lane program. The application may be submitted either in person or by mail; however, each applicant must be personally inspected prior to approval of the application. Authorization documents, such as decals or authorization letters, shall be valid for one year from date of approval.

* * * * *

(6) *Violation of conditions of the program.* A participant who violates any condition for the use of the dedicated commuter lane may be removed from the program at the discretion of the District Director, and shall be subject to the imposition of applicable fines, penalties, and/or sanctions as provided by law. The Chief Patrol Agent may, in an exercise of discretion, remove from the program a participant who violates any condition of use and who is encountered by the Border Patrol outside of the port of entry.

(7) *Responsibility of participant.*

(i) It shall be the responsibility of the participant to notify the Service if an approved vehicle is sold, stolen, or disposed of otherwise. If the vehicle is sold or damaged beyond repair, it is the responsibility of the participant to remove or obliterate any identifier or other authorization for participation in the program from the vehicle at the time of such sale or disposal. A participant must submit a new properly executed Form I–823 with fee in order to receive a new authorization document or device, valid for one year from date of approval.

(ii) If a damaged vehicle is being repaired and the identifier must be affixed to the vehicle, the Service may issue a replacement identifying document or device. The identifying authorization shall be valid to the date of the original authorization. The program participant must submit a properly executed Form I–823, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the repair of the vehicle.

(iii) If a windshield becomes broken and must be replaced, and an identifying decal authorizing that

vehicle to use a dedicated commuter lane is affixed to the broken windshield, the Service may issue a replacement decal. The program participant must submit a properly executed Form I–823, Application—Dedicated Commuter Lane Program, without fee, as well as a receipt, properly documented with the Vehicle Identification Number and the vehicle license tag number, for the purchase of a new windshield.

Dated: January 18, 1995.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 95–7629 Filed 3–28–95; 8:45 am]

**BILLING CODE 4410–10–M**

## 8 CFR Parts 235 and 242

**[INS No. 1616–93]**

**RIN 1115–AD50**

## List of Countries for Which Privilege of Communication is Allowed

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule revises the list of countries with which the United States has existing treaties requiring immediate communication with appropriate consular or diplomatic officers whenever nationals of those countries are detained in exclusion or expulsion proceedings. This rule is necessary to ensure that foreign nationals who are arrested by immigration officers in the United States will be aware of their privilege of communication with the consular or diplomatic officers of the country of his or her nationality. It is also necessary that immigration officers be kept abreast of changes of United States treaty obligations that require mandatory notification to certain countries when nationals of those countries are arrested. When aliens are detained by the Immigration and Naturalization Service (INS) officers at ports of entry, consular or diplomatic officers must be notified as presently required in 8 CFR 242 for deportation proceedings. Therefore, a addition will be made at 8 CFR 235 to make clear that the notification requirement applies equally in exclusion proceedings. This revision will have an impact on ensuring that the treaty rights of foreign nationals are protected.

**DATES:** This interim rule is effective March 29, 1995. Written comments must be submitted on or before May 30, 1995.

**ADDRESSES:** Please submit written comments, in triplicate, to the Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536 Attention: Public Comment Clerk. To ensure proper handling please reference INS number 1616–93 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3038 to arrange for an appointment.

**FOR FURTHER INFORMATION CONTACT:**

Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., Room 1000, Washington, DC 20536, telephone (202) 514–0747.

**SUPPLEMENTARY INFORMATION:** A number of changes are necessary to revise 8 CFR 242.2(g), the regulation that ensures immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries with which we have existing treaties are detained in exclusion or expulsion proceedings. A cross reference is being made to part 235 by adding a subsection, 235.3(g), to make clear that the mandatory notification requirement applies equally to exclusion and deportation proceedings.

Three countries, Malawi, Kenya, and Uganda are being removed from the list of countries for which consular notification is mandatory. The United States-United Kingdom consular convention which made notification mandatory is no longer in effect for these three countries, although it was in effect for a time after they became independent.

Other countries removed from the mandatory notification list include Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Cameroon, Canada, Chile, Colombia, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, France, Gabon, Federal Republic of Germany, Guatemala, Holy See, Honduras, Iraq, Ireland, Italy, Laos, Lesotho, Liechtenstein, Luxembourg, Madagascar, Mali, Mexico, Nepal, New Zealand, Niger, Oman, Pakistan, Panama, Paraguay, Portugal, Republic of China, Rwanda, Senegal, Somalia, Spain, Sweden, Switzerland, Tunisia, Uruguay, Upper Volta, Venezuela, Republic of Viet-Nam, and Yugoslavia. These countries have been removed because the Service has been informed by the Department of State that there has never been an obligation required by treaty to provide mandatory notification. Henceforth, the listing will only reflect those countries that do have treaties with the United States.

The disintegration of the Union of Soviet Socialist Republics (USSR) causes us to list the twelve Soviet successor states separately. The twelve states are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

We are also, however, listing ''Union of Soviet Socialist Republics (USSR),'' with a footnote listing the twelve successor states and noting that they continue to be covered by the mandatory notice provision of the United States-USSR consular convention. Including ''USSR'' with a footnote as a safeguard is advisable for the time being, since some nationals of the successor states may still be travelling on USSR passports.

Due to the break up of Czechoslovakia, the Czech and Slovak Republics will be listed separately as mandatory notification countries. The consular convention with Czechoslovakia, which contained a mandatory notification provision, remains in force with respect to both new countries.

Other countries being added to the mandatory notification list as a result of treaties with the United States include Albania, Antigua, Bahamas, Barbados, Belize, Brunei, Bulgaria, Dominica, Grenada, Kiribati, Mongolia, St. Kitts/Nevis, St. Lucia, St. Vincent/Grenadines, Seychelles, South Korea, and Tuvalu.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The reasons and the necessity for immediate implementation of this interim rule are as follows: The treaties to which the United States is a signatory require immediate communication with appropriate consular or diplomatic officers whenever nationals of particular countries are detained in exclusion or expulsion proceedings. Accordingly, implementation of this requirement cannot be delayed without the United States being in violation of its treaty obligations.

### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that the rule will not have a significant economic impact on a substantial number of small entities

because of the following factors. The rule primarily concerns matters of agency records and proof of facts at administrative hearings that do not concern small entities.

**Executive Order 12866**

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

**Executive Order 12612**

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

**Executive Order 12606**

The Commissioner of the Immigration and Naturalization Service certifies that she has assessed this rule in light of the criteria in Executive Order 12606 and has determined that this regulation has no impact on family well-being.

**List of Subjects**

*8 CFR Part 235*

Administrative practice and procedure, Aliens, Detention, Immigration, Port of entry, Reporting and recordkeeping requirements.

*8 CFR Part 242*

Administrative practice and procedure, Aliens.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

## PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

1. The authority citation for part 235 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

2. In § 235.3, a new paragraph (g) is added to read as follows:

**§ 235.3 Detention and deferred inspection.**

* * * * *

(g) *Privilege of communication.* The mandatory notification requirements of consular and diplomatic officers pursuant to 8 CFR 242.2(g) apply to exclusion proceedings.

## PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

3. The authority citation for part 242 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

4. In § 242.2, paragraph (g) is revised to read as follows:

**§ 242.2 Apprehension, custody, and detention.**

* * * * *

(g) *Privilege of communication.* Every detained alien shall be notified that he or she may communicate with the consular or diplomatic officers of the country of his or her nationality in the United States. Existing treaties require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien and even if the alien requests that no communication be undertaken in his or her behalf:

Albania [1]
Antigua
Armenia
Azerbaijan
Bahamas
Barbados
Belarus
Belize
Brunei
Bulgaria
China (People's Republic of) [2]
Costa Rica
Cyprus
Czech Republic
Dominica
Fiji
Gambia, The
Georgia
Ghana
Grenada
Guyana
Hungary
Jamaica
Kazakhstan
Kiribati
Kuwait
Kyrgyzstan
Malaysia
Malta
Mauritius
Moldova
Mongolia
Nigeria
Philippines
Poland
Romania
Russian Federation
St. Kitts/Nevis
St. Lucia
St. Vincent/Grenadines
Seychelles
Sierra Leone
Singapore
Slovak Republic
South Korea
Tajikistan
Tanzania
Tonga
Trinidad/Tobago
Turkmenistan
Tuvalu
Ukraine
United Kingdom [3]
U.S.S.R.[4]
Uzbekistan
Zambia

1. Arrangements with these countries provide that U.S. authorities shall notify responsible representatives within 72 hours of the arrest or detention of one of their nationals.

2. When Taiwan nationals (who carry ''Republic of China'' passports) are detained, notification should be made to the nearest office of the Coordination Council for North American Affairs, the unofficial entity representing Taiwan's interests in the United States.

3. British dependencies are also covered by this agreement. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.

4. All U.S.S.R. successor states are covered by this agreement. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

* * * * *

Dated: March 23, 1995.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 95–7684 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Parts 92 and 98

**[Docket No. 94–087–1]**

### Canadian Border Ports; Baudette, MN

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** We are amending the animal importation regulations by adding Baudette, MN, as a Canadian border port for pet birds, poultry, horses, ruminants, swine, and germ plasm. We have determined that Baudette, MN, has inspection facilities which meet our

requirements for Canadian border port status. This action will provide an additional Canadian border port.

**DATES:** This rule will be effective on May 30, 1995 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before April 28, 1995.

**ADDRESSES:** Please send an original and three copies of any adverse comments or notice of intent to submit adverse comments to Docket No. 94–087–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your submission refers to Docket No. 94–087–1. Submissions received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments and notices are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. David Vogt, Senior Staff Veterinarian, Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, Import/Export Animals Staff, 4700 River Road Unit 39, Riverdale, MD 20737–1228; (301) 734–8172.

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 9 CFR parts 92 and 98 (referred to below as the regulations) restrict the importation of specified animals and animal products into the United States. The regulations designate land border ports along the U.S.-Canada border which have inspection facilities for the importation of certain animals and germ plasm that require inspection. Section 92.102(a) of the regulations lists the special ports having inspection facilities for the importation of certain pet birds. Sections 92.203(b), 92.303(b), 92.403(b), 92.503(b) and 98.33(b) of the regulations list the Canadian border ports having inspection facilities for the importation of certain poultry, horses, ruminants, swine and germ plasm, respectively.

A new facility in Baudette, MN, is ready for use as an inspection station. We have determined that the Animal and Plant Health Inspection Service has the personnel and facilities at Baudette, MN, required to effectively provide inspection services. Baudette, MN, is currently listed in §§ 92.403(e) and 92.503(e) as a limited port for ruminants and ruminant products and swine and swine products, respectively. Limited ports are used for animals and animal products that do not require restraint and holding facilities. Since Baudette, MN, is capable of performing full inspection services, we will remove Baudette, MN, from the list of limited ports.

This rule will amend §§ 92.102(a), 92.203(b), 92.303(b), 92.403(b), 92.403(e), 92.503(b), 92.503(e), and 98.33(b) in accordance with the procedures explained below under ''Dates.'' The amendment will add Baudette, MN, as a Canadian border port and remove it as a limited port.

## Dates

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

Adverse comments are comments that suggest the rule should not be adopted or that suggest the rule should be changed.

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

As discussed above, if we receive no written adverse comments nor written notice of intent to submit adverse comments within 30 days of publication of this direct final rule, this direct final rule will become effective 60 days following its publication. We will publish a notice to this effect in the **Federal Register**, before the effective date of this direct final rule, confirming that it is effective on the date indicated in this document.

## Executive Order 12866 and Regulatory Flexibility Act

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

Currently, Baudette, MN, is a limited port for certain ruminants, ruminant products, swine, and swine products. This rule will add Baudette, MN, as a Canadian border port for certain pet birds, poultry, horses, ruminants, swine, and germ plasm. We believe the primary impact will be on importers of certain pet birds, poultry, horses, ruminants, swine, and germ plasm. Few if any of these entities can be regarded as small.

If this rule is not adopted, some importers would have to travel long distances to a port in another State. We believe that adding Baudette, MN, as a Canadian border port will benefit U.S. importers of pet birds, poultry, horses, ruminants, and swine since these importations will now be logistically easier for a number of these entities. Based on information from the local livestock industry we expect 500 to 1,000 head of Canadian cattle to be imported into the United States through Baudette, MN. Approximately half of these imports will be diverted from other ports. In 1993, cattle imports into the United States from Canada totaled approximately 1.2 million head. Therefore, we do not anticipate this increase in the imports to have a significant economic impact.

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

## Executive Order 12372

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

## Executive Order 12778

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

## Paperwork Reduction Act

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

## List of Subjects

*9 CFR Part 92*

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

*9 CFR Part 98*

Animal diseases, Imports.

Accordingly, 9 CFR parts 92 and 98 are amended as follows:

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

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

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

### § 92.102 [Amended]

2. In § 92.102, paragraph (a) is amended by adding the words ''Baudette, Minnesota;'' immediately after ''New York, New York;''.

### §§ 92.203, 92.303, 92.403, and 92.503 [Amended]

3. Sections 92.203, 92.303, 92.403, and 92.503 are amended by adding the words ''Baudette, Minnesota;'' immediately after ''Michigan;'' in the following places:

a. In § 92.203, paragraph (b);

b. In § 92.303, paragraph (b);

c. In § 92.403, paragraph (b); and

d. In § 92.503, paragraph (b).

### §§ 92.403 and 92.503 [Amended]

4. Sections 92.403 and 92.503 are amended by removing the words ''Baudette and'' in the following places:

a. In § 92.403, paragraph (e) and

b. In § 92.503, paragraph (e).

## PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

4. The authority citation for part 98 is revised to read as follows:

**Authority:** 7 U.S.C. 1622; 21 U.S.C. 103, 104, 105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

### § 98.33 [Amended]

5. In § 98.33, paragraph (b) is amended by adding ''Baudette, Minnesota;'' immediately after ''Sault Ste. Marie, Michigan;''.

Done in Washington, DC, this 22nd day of March 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–7598 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–34–P

## EXPORT-IMPORT BANK

## 12 CFR Parts 401, 402, and 406

## General Procedures, Extension of Credit, and Book-Entry Procedures; Removal of Obsolete Regulation

**AGENCY:** Export-Import Bank.

**ACTION:** Final rule.

**SUMMARY:** The Export-Import Bank (''Ex-Im Bank'') is removing its existing regulations at 12 CFR parts 401, 402 and 406. These regulations no longer accurately describe the programs and policies of Ex-Im Bank.

**EFFECTIVE DATE:** The removal of 12 CFR parts 401, 402 and 406 is effective as of March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Carol Lee, Export-Import Bank of the United States, General Counsel, 811 Vermont Ave., NW., Washington, DC 20571, tel. (202) 565–3430.

**SUPPLEMENTARY INFORMATION:**

### List of Subjects

*12 CFR Part 401*

Administrative practice and procedure, Banks, banking, Exports, Insurance, Loan programs—business, Organization and functions (Government agencies).

*12 CFR Part 402*

Banks, banking, Exports, Insurance, Loan programs—business.

*12 CFR Part 406*

Accounting, Banks, banking, Federal Reserve System, Government securities.

## PARTS 401, 402, and 406—[REMOVED]

Accordingly, under authority of 5 U.S.C. 552, 12 CFR parts 401, 402 and 406 are removed.

Dated: March 14, 1995.

**Carol F. Lee,**

*General Counsel, Export-Import Bank.*

[FR Doc. 95–6846 Filed 3–28–95; 8:45 am]

BILLING CODE 6690–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 14 CFR Part 1260

**RIN 2700–AB95**

## Amending the NASA Research Grant Handbook To Address Education Grants, Training Grants, and Reduce the Threshold for Incremental Funding of Grants

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** NASA has revised its Research Grant Handbook to define education and training grants, permit the award of education grants, and decrease the threshold for incremental funding of grants. The purpose of these changes are to increase the coverage of the Handbook and provide greater funding flexibility. These changes benefit both NASA and the grantee community.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Thomas W. Dussault, (202) 358–0463.

**SUPPLEMENTARY INFORMATION:**

### Background

In response to the interim rule (59 FR 36355, July 18, 1994), NASA received 1 comment from 1 person.

The only comment made was in regard to lowering the threshold for incrementally funding grants. In the interim rule NASA lowered the threshold for being able to incrementally fund grants from over $1 million to $50,000. The comment made was that $50,000 was thought to be too low and that NASA should consider raising it to $250,000. The lower threshold of $50,000 was selected because it allows NASA greater flexibility to award grants when the bulk of the funding will not be available until the next fiscal year.

### Impact

NASA certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

### List of Subjects in 14 CFR Part 1260

Grants.

**Tom Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 14 CFR part 1260 is amended as follows:

## PART 1260—[AMENDED]

1. The authority citation for 14 CFR part 1260 continues to read as follows:

**Authority:** Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.).

2. Under the authority of Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 et seq.), the interim rule published at 59

FR 36355, July 18, 1994, is adopted as final without change.

[FR Doc. 95–7735 Filed 3–28–95; 8:45 am]
BILLING CODE 7510–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 10, 123, 145 and 178

**[T.D. 94–47]**

**RIN 1515–AB40**

### Elimination of Certain Documentation Requirements for Articles Entered Under Various Special Tariff Treatment Programs and Provisions

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects a final rule document which amended the Customs Regulations by removing certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs. The correction involves an amendatory instruction regarding § 178.2 of the Customs Regulations which lists the control numbers for approvals of information collection requirements.

**EFFECTIVE DATE:** This correction is effective June 16, 1994.

**FOR FURTHER INFORMATION CONTACT:** Craig Walker, Office of Regulations and Rulings, 202–482–6980.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 17, 1994, Customs published in the **Federal Register** (59 FR 25563) a final rule document amending the Customs Regulations to remove certain documentation requirements relating to the entry of articles claimed to be entitled to a partial duty exemption or duty-free treatment under various special tariff provisions or programs. Among the amendments were consequential amendments to § 178.2 of the Customs Regulations (19 CFR 178.2) concerning the revision, removal or addition of listings in the table setting forth the listing of Office of Management and Budget control numbers for approvals of information collection requirements pursuant to the Paperwork Reduction Act of 1980. One of the removed listings referred to in the amendatory instruction was the listing for § 10.8(e). However, this reference was incorrect because, in an interim rule document published in the **Federal Register** on December 30, 1993 (58 FR 69460), § 178.2 had been amended by removing from the table the reference to ''§ 10.8(e)'' and adding, in its place, the reference ''§ 10.8(f)''. Accordingly, this document corrects the amendatory instruction for § 178.2 in the May 17, 1994, final rule document to properly refer to the removal of § 10.8(f).

#### Correction of Publication

In the document published in the **Federal Register** as T.D. 94–47 on May 17, 1994 (59 FR 25563), on page 25571, second and third columns, the amendatory instruction for § 178.2 is corrected to read as follows:

**§ 178.2 [Corrected]**

''2. Section 178.2 is amended by revising the listings for §§ 10.1 and 10.173, removing the listings for §§ 10.8(f), 10.9(e), and 10.191–10.198 and adding, in their place respectively, listings for §§ 10.8, 10.9, and 10.198 to read as follows:''

Dated: March 23, 1995.

**Harold M. Singer,**

*Chief, Regulations Branch.*

[FR Doc. 95–7721 Filed 3–28–95; 8:45 am]
BILLING CODE 4820–02–P

## DEPARTMENT OF STATE

### 22 CFR Part 22

**[Public Notice 2182]**

### Schedule of Fees for Consular Services

**AGENCY:** Bureau of Consular Affairs, State.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule establishing fees for the processing of fingerprints required of certain applicants for immigrant visas. These fees, pursuant to the guidelines set out in Office of Management and Budget (OMB) Circular No. A–25, are set at a cost-recovery based level of $25.00 per set of fingerprints.

**DATES:** *Effective Date:* March 29, 1995. *Comments:* Comments are due on or before April 28, 1995.

**ADDRESSES:** Interested persons are invited to submit comments in duplicate to the Office of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818.

**FOR FURTHER INFORMATION CONTACT:**

John Arndt, Management Analyst, Officer of the Executive Director, Bureau of Consular Affairs, Department of State, Washington, DC 20520–4818, (202) 647–1272.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 140(d) of the Foreign Relations Authorization Act, FY 94–95 (Public Law 103–236), enacted April 30, 1994, authorizes the Department of State to obtain the full content of criminal history records of those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center. To do so requires submission of fingerprint records. The statute further provides that the Department shall pay the appropriate fee as provided for in the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, FY 90 (Public Law 101–162), and that the program shall end on January 1, 1998.

Section 505 of the Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, FY 95 (Public Law 103–317), enacted August 26, 1994, requires the Secretary of State, in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available, to submit to the Federal Bureau of Investigation (F.B.I.) records of fingerprints for all immigrant visa applicants over sixteen years of age to ascertain whether such applications have been previously convicted of a felony under State or Federal law in the United States. Section 505 further provides that the Department shall pay all appropriate fees for this fingerprinting pilot program and that the program shall end on January 1, 1998.

Executive Order 10718 of June 27, 1957, authorizes the Secretary of State to exercise the President's authority under 22 U.S.C. 4219 to prescribe rates of fees to be charged for official services performed by the Department of State. Under this authority, the Department has determined a number of fees for consular services performed overseas, as well as in the United States, within the guidelines set by OMB Circular No. A–25. The policy set out in OMB Circular A–25 states that services which directly benefit individuals, organizations, or groups should be paid for by the users rather than the taxpayers. Services performed for the primary benefit of the general public or the U.S. Government are to be supported by tax revenues. The

principles of OMB Circular A–25 have guided various fee studies conducted by the Department.

Under Delegation of Authority No. 198, the Secretary of State delegated to the Under Secretary for Management all management-related functions arising out of the activities or certain bureaus, including the Bureau of Consular Affairs. Pursuant to this Delegation, the Under Secretary of Management has the authority to establish the fingerprinting fee and to promulgate this regulation.

The fingerprint fee is set at $25.00 to recover the cost to the Department of paying the F.B.I.'s $18.00 fee for examining and checking the fingerprints against its fingerprint records. Added to the F.B.I. charge of $18.00 is $7.00 in administrative costs for each set of fingerprints which will cover the cost to the Department of taking the applicant's fingerprints, transmitting them to the F.B.I., and obtaining and reviewing records from the F.B.I. It will also cover the costs of equipment, renovations, furnishings, and supplies used in connection with the fingerprint program. This $7.00 figure was determined by calculating the estimated cost of fingerprinting 205,000 immigrant visa applicants (the estimated number of applicants that will be affected by section 140(d) of Public Law 103–236 and by section 505 of Public Law 103–317), and then dividing that figure by the number of affected immigrant visa applicants to arrive at the pro rata unit cost of implementing the new fingerprinting requirement.

Section 140(d) of the Foreign Relations Authorization Act, FY 94–95 (Public Law 103–236), enacted April 30, 1994, authorizes the Department of State to obtain the full content of criminal history records of those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center.

Section 505(e) of the Departments of Commerce, Justice, and State, and the Judiciary and Related Agencies Appropriations Act, FY 95 (Public Law 103–317), enacted August 26, 1994, requires the Department of State, in the ten countries with the highest volume of immigrant visa issuance for the most recent fiscal year for which data are available, to submit records of fingerprints for all immigrant visa applicants over sixteen years of age to the F.B.I. to ascertain whether such applicants have been previously convicted of a felony under State or Federal law in the United States.

The implementation of this rule as an interim rule, with provision for post-promulgation comments, is based upon the ''good cause'' exception found at 5 U.S.C. 553(d)(3). The Department of State is statutorily authorized to obtain the full content of criminal history records as described above. In accordance with this requirement, the Department has already begun transmitting the names of immigrant visa applicants to the F.B.I. This rule must take effect upon publication to ensure that the Department is reimbursed for the expenses it will incur in obtaining those records.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required by Executive Order 12778 and certified to be in compliance therewith. This rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

**List of Subjects in 22 CFR Part 22**

Passport and visas.

Accordingly, 22 CFR part 22 is amended as follows:

## PART 22—[AMENDED]

1. The authority citation for part 22 is revised to read as follows:

**Authority:** 8. U.S.C. 1182, 1351; 22 U.S.C. 211a, 214, 2651, 2658, 3921, 4219; 31 U.S.C. 9701; EO 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; EO 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. In § 22.1, the table is amended under the undesignated centered heading, ''Visa Services for Aliens'' by revising the parenthetical after item 25 and adding items 27 and 28 and a parenthetical after the items to read as follows:

**§ 22.1 Schedule of fees.**

| Item No. | Fee |
|---|---|
| * * * * * * * | |
| (Item No. 26 vacant.) | |
| 27. For the taking of fingerprints for those applicants for immigrant visas whose names are indexed in the Interstate Identification Index of the National Crime Information Center | $25.00 |
| 28. For the taking of fingerprints from immigrant visa applicants pursuant to 8 U.S.C. 1182 | 25.00 |
| (Item No. 29 vacant.) | |
| * * * * * * * | |

Dated: March 11, 1995.

**Richard Moose,**

*Under Secretary for Management, Department of State.*

[FR Doc. 95–7687 Filed 3–28–95; 8:45 am]

BILLING CODE 4710–06–M

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 936

## Oklahoma Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule, approval of amendment.

**SUMMARY:** OSM is approving a proposed amendment to the Oklahoma regulatory program (hereinafter referred to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of recodification of Oklahoma's coal mining rules and revisions to the rules pertaining to hydrologic balance requirements for siltation structures, sedimentation pond storage volume, subsidence control and public notice, road systems, protection of underground

mining, and soil removal, stockpiling, and replacement requirements for prime farmland. Oklahoma submitted the amendment with the intent of revising its rules to be consistent with the corresponding Federal regulations, clarifying ambiguities, and improving operational efficiency.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** James H. Moncrief, Telephone: (918) 581–6430.

**SUPPLEMENTARY INFORMATION:**

## I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. General background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Oklahoma program can be found in the January 19, 1981, **Federal Register** (46 FR 4902). Subsequent actions concerning Oklahoma's program and program amendments can be found at 30 CFR 936.15, 936.16, and 936.30.

## II. Submission of Amendment

On September 14, 1994, Oklahoma submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*, administrative record No. OK–963). Oklahoma submitted the proposed amendment in part at its own initiative and in part with the intent of revising the Oklahoma program to be consistent with the corresponding Federal regulations.

Oklahoma proposed to revise the Oklahoma Coal Rules and Regulations at Department of Mines/Rules and Regulations (DOM/RR) sections 816.46 and 817.46, hydrologic balance and siltation structures; section 823.12, prime farmland soil removal; section 823.13, prime farmland soil stockpiling; and section 823.14, prime farmland soil replacement. Oklahoma also proposed to recodify its rules in accordance with the standards set forth by the Oklahoma State Legislature and the Office of Administrative Code.

OSM announced receipt of the proposed amendment in the September 27, 1994, **Federal Register** (59 FR 49223), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. OK–963.03). Because no one requested a public hearing or meeting, none was held. The public comment period ended on October 27, 1994.

During its review of the amendment, OSM identified concerns relating to the provisions of recodified Oklahoma Administrative Code (OAC) 460:20–27–20(b) and 460:20–31–17(b), primary road certification requirements for road systems and transportation facilities. OSM also identified concerns with Oklahoma's proposed rule recodification relating to OAC 460:20–43–12(f)(8), sedimentation pond storage volume; OAC 460:20–43–47 and 460:20–43–48, subsidence control for surface mining activities; OAC 460:20–45–28, protection of underground mining; and various editorial and citation inconsistencies. OSM notified Oklahoma of the concerns by letter dated November 22, 1994 (administrative record No. OK–963.08).

By letter dated December 20, 1994, Oklahoma responded to the concerns identified in OSM's November 22, 1994, letter by submitting the revised amendment and additional explanatory information (administrative record No. OK–963.10). The provisions that Oklahoma proposed to revise and add were: OAC 460:20–27–20(b) and 460:20–31–17(b), concerning the as-built requirements regarding primary road certification for road systems and transportation facilities; OAC 460:20–43–12(f)(8), concerning the requirement that sediment shall be removed from a structure when the sediment storage volume is 80 percent filled; OAC 460:20–45–47 and 460:20–45–48, concerning subsidence control for surface mining activities; and OAC 460:20–45–28, concerning the protection of underground mining. Oklahoma also proposed revisions to and provided additional explanatory information for the recodification of its coal mining rules.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by Oklahoma, OSM reopened the public comment period in the December 30, 1994, **Federal Register** (59 FR 67694; administrative record No. OK–963.12). The public comment period closed on January 17, 1995.

After the closing of the reopened comment period, OSM became aware that both Oklahoma's September 14, 1994, and December 20, 1994, amendment submittals contained a number of rule revisions that were previously approved by OSM on December 18, 1990 (55 FR 51902), and promulgated by Oklahoma on July 25, 1994. Because the previously approved provisions were formatted in such a manner so as to appear as if they were being submitted for the first time, OSM, in both the September 27, 1994, and December 30, 1994, **Federal Register** notices opening and reopening the public comment period, inadvertently identified those previously approved Oklahoma rules as being currently proposed revisions to the Oklahoma program. To alleviate confusion as to which provisions were actually unapproved when submitted to OSM for approval, this notice addresses only the unapproved provisions submitted by Oklahoma.

## III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed program amendment submitted by Oklahoma on September 14, 1994, and as revised by it on December 20, 1994, is no less effective than the corresponding Federal regulations. The Director approves the proposed amendment.

*1. Nonsubstantive Recodification of Oklahoma's Rules*

Oklahoma, in accordance with the standards set forth by the Oklahoma State Legislature and the Oklahoma Office of Administrative Code, proposed to recodify its coal mining rules as OAC title 460, chapter 20, with underlying subchapters specifying the various surface and underground coal mining provisions.

Oklahoma's proposed recodification of its rules is nonsubstantive in nature, and the Director finds that the recodification does not make its rules less effective than the Federal regulations. Therefore, the Director approves the proposed recodification. OSM uses Oklahoma's recodified rule citations throughout this **Federal Register** notice.

*2. Substantive Revisions to Oklahoma's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations*

Oklahoma proposed revisions to OAC 460:20–49–5(a)(1), 460:20–49–6, and 460:20–49–7(5), concerning soil removal, stockpiling, and replacement requirements for prime farmland, that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulations at 30 CFR 701.5, 823.12(c)(1), and 823.14(e).

Because these proposed Oklahoma rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

*3. OAC 460:20–27–20(b), 460:20–31–17(b), 460:20–43–53(1), and 460:20–45–53(1), Primary Road Certification Requirements for Road Systems and Transportation Facilities*

Oklahoma proposed to revise its rules by moving the ''as-built'' certification requirements for primary roads from its permitting rules at OAC 460:20–27–20(b) and 460:20–31–17(b) to its performance standard rules at 460:20–43–53(1) and 460:20–45–53(1). As-built certifications ensure that structures are constructed as designed.

The Federal as-built regulations at 30 CFR 816.151(a) and 817.151(a) require, in pertinent part, that the construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified, registered, professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads, a qualified, registered, professional land surveyor with experience in the design and construction of roads.

Oklahoma's moving of its as-built requirements for primary roads from the permitting requirements of OAC 460:20–27–20(b) and 460:20–31–17(b) to the performance standard requirements of OAC 460:20–43–53(1) and 460:20–45–53(1) is consistent with the as-built counterpart Federal regulations at 30 CFR 816.151(a) and 817.151(a), which are contained in the Federal road performance standards.

The Director finds that Oklahoma's proposed revisions to OAC 460:20–43–53(1), and 460:20–45–53(1) are no less effective than the Federal regulations at 30 CFR 816.151(a) and 817.151(a). The Director approves Oklahoma's rule revisions.

*4. OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), Certification of Construction of Siltation Structures by Qualified, Registered Professional Engineers and Land Surveyors*

At OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), Oklahoma proposed to delete the references to OAC 460:20–27–14(a) and 460:20–31–9(a). Existing OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) authorize both qualified, registered professional engineers and land surveyors in Oklahoma to certify the *construction* of siltation structures; existing referenced OAC 460:20–27–14(a) and 460:20–31–9(a) authorize only qualified, registered professional engineers to certify *design plans* for siltation structures. OSM approved these existing rules on December 18, 1990, (finding No. 2, 55 FR 51902, 51903–4) on the basis that the by-laws of the Oklahoma State Board of Registration of Professional Engineers and Surveyors authorizes qualified, registered professional engineers to certify the construction and design of siltation structures but authorizes qualified, professional land surveyors to certify only the construction of siltation structures. In this approval, OSM found Oklahoma's rules to be no less effective than the corresponding Federal regulations at 30 CFR 816.46(b)(3) and 817.46(b)(3).

Oklahoma's proposed deletions in the construction certification rules at OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) of the references to the design certification rules at OAC 460:20–27–14(a) and 460:20–31–9(a) eliminate any possible confusion on what certifications qualified, registered professional engineers and land surveyors can make under the approved Oklahoma program.

Oklahoma's proposed revisions to OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3) deleting the references to OAC 460:20–27–14(a) and 460:20–31–9(a) are consistent with OSM's previous approval and are no less effective than the Federal regulations at 30 CFR 816.46(b)(3) and 817.46(b)(3). Accordingly, the Director approves Oklahoma's rule revisions.

*5. OAC 460:20–43–12(f)(8), Sedimentation Pond Storage Volume*

Oklahoma proposed to revise OAC 460:20–43–12(f)(8) to delete the requirement that sediment be removed from a sedimentation pond when the sediment storage volume is 80 percent filled. It did so to be consistent with its rule at OAC 460:20–43(c)(1)(C)(vi) and the Federal regulations at 30 CFR 816.46(c)(iii)(F) that require that ponds be maintained to provide *periodic* sediment removal sufficient to maintain adequate volume for the design event. Oklahoma's proposed deletion of OAC 460:20–43–12(f)(8) alleviates the regulatory inconsistency in its rules with the provision at OAC 460:20–43–12(c)(1)(C)(vi) and is consistent with and no less effective than the Federal regulations at 30 CFR 816.46(c)(iii)(F). Accordingly, the Director approves Oklahoma's proposed rule revision.

*6. OAC 460:20–43–47 and 48, Subsidence Control and Public Notice*

Oklahoma proposed to revise its *surface* mining activities performance standards provisions at OAC 460:20–43–47 and 48 to add subsidence control and public notice measures that apply to *underground* mining activities. Oklahoma explained that it was doing so because it issues underground mine permits pursuant to the surface mine requirements included in Subchapter 43 (administrative record No. OK–963.10).

The Federal regulations corresponding to OAC 460:20–43–47 and 48 are at 30 CFR 817.121 and 817.122. These Oklahoma rules include the same subsidence control and notice requirements as these Federal regulations. However, OSM notes it has proposed revisions to 30 CFR 817.121 to comply with revisions to SMCRA made by the Energy Policy Act of 1992 (58 FR 50174, September 24, 1993). Once OSM promulgates new regulations, it will notify Oklahoma in accordance with 30 CFR 732.17(d) of any necessary revisions to Oklahoma's program. Until such time the Director finds that Oklahoma's proposed subsidence control and notice rules at OAC 460:20–43–47 and 48 are no less effective than the currently promulgated regulations at 30 CFR 817.121 and 817.122. Therefore, the Director approves the proposed rule revisions.

*7. OAC 460:20–45–28, Protection of Underground Mining*

Oklahoma proposed to revise its *underground* mining performance standards at OAC 460:20–45–28 to delete a provision regarding the protection of underground mining operations from the effects of surface mining activities. However, Oklahoma still retains in its *surface* mining performance standards at OAC 460:20–43–28 an identical requirement. Therefore, the Oklahoma rules still provide an identical level of protection to underground mining operations from the adverse effects of surface mining activities.

There are no Federal *underground* mining regulations that correspond to the deleted Oklahoma rule. However, the Federal *surface* mining regulation at 30 CFR 816.79 sets forth provisions regarding the protection of underground mining operations from the effects of surface mining activities that are substantively identical to the Oklahoma *surface* mining requirements at OAC 460:20–43–28. Therefore, the Director finds that the proposed deletion of the underground mining protection provision at OAC 460–20–45–28 and retention of an identical provision at OAC 460:20–43–28 is no less effective than the Federal regulations at 30 CFR 816.79. The Director approves the proposed rule revision.

## IV. Summary and Disposition of Comments

The Director notes that the following public and Federal agency comments were received in response to the

September 27, 1994, and December 30, 1994, proposed rule **Federal Register** notices that inadvertently identified certain previously approved Oklahoma rules as being currently proposed revisions to the Oklahoma program.

*1. Public Comments*

OSM invited public comments on the proposed amendment, but none were received.

*2. Federal Agency Comments*

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (administrative record No. OK–963.02).

The U.S. Army Corps of Engineers responded on September 30, 1994, that Oklahoma's proposed revisions were satisfactory (administrative record No. OK–963.04).

The U.S. Bureau of Mines (BOM) responded on September 27, 1994, that while Oklahoma's proposed rule to OAC 460:20–27–14(a)(1)(A) deletes the reference to preparation and certification of the design of ponds, impoundments, banks, dams and embankments, by a ''professional geologist, or a qualified, registered, professional land surveyor,'' the proposed rule to OAC 460:20–43–12(b)(3) then adds the statement that siltation structure construction may be certified by a ''registered professional land surveyor'' (administrative record No. OK–963.05). BOM further stated that this appears to be a contradiction in that in one instance, qualified, registered, professional land surveyors are not allowed to design the ponds, yet they are allowed to certify that the ponds are constructed correctly. Finally, BOM commented that this same contradiction occurs in OAC 460:20–45–12 for underground mining activities.

As discussed in finding No. 4 and OSM's December 18, 1990, final rule **Federal Register** notice, Oklahoma's by-laws of the State Board of Registration for Professional Engineers and Surveyors do not authorize registered land surveyors in Oklahoma to prepare and/or certify engineered designs, but they do authorize land surveyors to certify the construction of siltation structures since certification that a structure is built according to design does not require the same qualified expertise as the actual design of the structure (finding No. 2, 55 FR 51902, 51903–4). Accordingly, Oklahoma's rules at OAC 460:20–27–14(a)(1)(A), 460:20–31–9(a)(1)(A, 460:20–43–12(b)(3), and 460:20–45–12(b)(3) do not contradict each other.

The U.S. Bureau of Land Management (BLM) responded on October 12, 1994, by commenting that under OAC 460:20–45–12(b)(3), a registered professional land surveyor is authorized to certify that siltation structures are constructed as designed, but the authorization for a registered professional land surveyor to prepare and certify siltation structure plans designs has been removed elsewhere in Oklahoma's rules (administrative record No. OK–963.06). BLM then inquired as to whether OSM intended to retain the certification authorization for registered professional land surveyors at OAC 460:20–45–12(b)(3). In response to this comment, the Director refers BLM to the discussion above, which responds to BOM concerns regarding the same issue.

BLM further commented that it questioned the practicality of the change under the prime farmland soil removal rule at OAC 460:20–49–5(a)(1) where Oklahoma proposed to delete language that would have allowed surface coal mining and reclamation operations on prime farmland to remove other suitable soil materials which will create a final soil having productive capacity equal to that which existed prior to mining.

BLM commented that when soil is removed, stockpiled, and reapplied there is some loss and mixing due to the limitations of the handling process itself. When soil is removed and stockpiled there is a mycorrhyzal degradation within the soil. Further, more significant mycorrhyzal degradation occurs over time within the stockpile. Mycorrhyzal degradation lowers soil productivity. BLM also stated that expecting greater productivity from soil which has undergone such disturbance is not reasonable and that it would be more productive for the guidelines to recommend seeding topsoil piles with a temporary cover grass for the duration of stockpiling. Finally, BLM commented that such seeding would maintain some of the mycorrhyzal community within the stockpiled topsoil.

The Director acknowledges BLM's concerns regarding diminished soil productivity. However, section 515(b)(7)(A) of SMCRA requires, in pertinent part, that ''[f]or all prime farm lands * * * the operator shall, as a minimum, be required to * * * segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a *greater* productivity capacity * * *'' (emphasis added). Also, the corresponding Federal regulations at 30 CFR 823.12(c)(1) require, in pertinent part, that ''[s]oil removal and stockpiling operations on prime farmland shall be conducted to * * * remove other suitable soil materials where such other soil materials will create a final soil having a *greater* productive capacity than that which exist prior to mining'' (emphasis added). OSM previously approved Oklahoma's rule revision in the December 18, 1990, final rule **Federal Register** notice (55 FR 51902, 51903), as being substantively identical to the corresponding provisions of the Federal regulations at 30 CFR 823.12(c)(1). Accordingly, Oklahoma's deletion of the aforementioned phrase ''an equal or'' is no less stringent than section 515(b)(7)(A) of SMCRA and no less effective than the corresponding Federal regulations at 30 CFR 823.12(c)(1).

In addition, the Director notes that the State and Federal requirements that a final soil have a greater productive capacity than that which existed prior to mining applies only to *topsoil substitutes*, and not the original topsoil material. Finally, the Director refers BLM to the Federal regulations at 30 CFR 816.22(c)(2)(iii), which require, in pertinent part, that ''[s]tockpiled topsoil materials shall be protected from wind and water erosion through prompt establishment and maintenance of an effective, quick growing vegetative cover or through other measures approved by the regulatory authority.'' Oklahoma's counterpart rule at OAC 460:20–43–7(c)(2)(C) is substantively identical to 30 CFR 816.22(c)(2)(iii). While OSM cannot dictate that Oklahoma always require operators to seed topsoil, by virtue of the fact that nearly all operators in Oklahoma do seed topsoil, BLM's recommendation for seeding topsoil piles is almost always implemented in Oklahoma.

*3. Environmental Protection Agency (EPA) Concurrence and Comments*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Oklahoma proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record No. OK–963.02). It responded on October 13, 1994, that

it had no objections to the approval of Oklahoma's proposed regulations (administrative record No. OK–963.07).

*4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)*

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. OK–963.02). Neither SHPO nor ACHP responded to OSM's request.

**V. Director's Decision**

Based on the above findings, the Director approves Oklahoma's proposed amendment as submitted on September 14, 1994, and as revised on December 20, 1994.

The Director approves, as discussed in: Finding No. 1, concerning Oklahoma's proposed recodification of its coal mining rules; finding No. 2, OAC 460:20–49–5(a)(1), 460:20–49–6, and 460:20–49–7(5), concerning soil removal, stockpiling, and replacement requirements for prime farland; finding No. 3, OAC 460:20–27–20(b), 460:20–31–17(b), 460:20–43–53(1), and 460:20–45–53(1), concerning primary road certification requirements for road systems and transportation facilities; finding No. 4, OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), concerning certification of construction of siltation structures by qualified, registered professional engineers and land surveyors; finding No. 5, OAC 460:20–43–12(f)(8), concerning sedimentation pond storage volume; finding No. 6, OAC 460:20–43–47 and –48, concerning subsidence control and public notice; and finding No. 7, OAC 460:20–45–28, concerning protection of underground mining.

The Director approves the rules as proposed by Oklahoma with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 936, codifying decisions concerning the Oklahoma program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

**VI. Procedural Determinations**

*1. Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12886 (Regulatory Planning and Review).

*2. Executive Order 12778*

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

*3. National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

*4. Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*5. Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

**List of Subjects in 30 CFR Part 936**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 25, 1995.

**Charles E. Sandberg,**

*Acting Assistant Director, Western Support Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended by adding paragraph (p) to read as follows:

**§ 936.15 Approval of amendments to the Oklahoma regulatory program.**

* * * * *

(p) Recodification of Oklahoma's rules and revisions to the following provisions of Oklahoma's recodified rules, as submitted to OSM on September 14, 1994, and as revised on December 20, 1994, are approved effective March 29, 1995:

OAC 460:20–43–12(b)(3) and 460:20–45–12(b)(3), certification of construction of siltation structures by qualified, registered professional engineers and land surveyors;

OAC 460: 20–43–12(f)(8), sedimentation pond storage volume;

OAC 460: 20–43–47 and 48, subsidence control for surface mining activities;

OAC 460: 20–43–53(1) and 460:20–45–53(1), primary road certification requirements for road systems and transportation facilities;

OAC 460: 20–45–28, protection of underground mining; and

OAC 460: 20–49–5(a)(1), 460: 20–49–6, and 460:20–49–7(5), soil removal, soil stockpiling, and soil replacement requirements for prime farmland.

[FR Doc. 95–7697 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 185 and 186

**[FAP 3H5673, 4H5695, 4H5696/R2119; FRL–4942–9]**

**RIN 2070–AB78**

## Food and Feed Additive Regulations for d-Limonene, Dihydro-5-Pentyl-2(3H)-Furanone, and Dihydro-5-Heptyl-2(3H)-Furanone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This document establishes food/feed additive regulations for residues of the insecticides d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insect-repellent tablecloths and in insect-repellent strips used in food/feed handling establishments. Rod Products Co. requested these regulations.

**EFFECTIVE DATE:** These regulations become effective March 29, 1995.

**ADDRESSES:** Written objections, identified by the document control number, [FAP 3H5673, 4H5695, 4H5696/R2119], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6600; e-mail: Forrest.Robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 8, 1995 (60 FR 7511), EPA issued a proposed rule that gave notice that Rod Products Co., 4600 Glencoe Ave., No. 4, Marina del Rey, CA 90292-6363, had submitted to EPA food/feed additive petitions (FAPs) 3H5673, 4H5695, and 4H5696, which requested that the Administrator, pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, amend 40 CFR parts 185 and 186 by establishing regulations for residues for d-limonene, dihydro-5-pentyl-2(3H)-furanone, and dihydro-5-heptyl-2(3H)-furanone when used as active ingredients in insecticide-repellent tablecloths used in food/feed-handling establishments. The registrant subsequently requested the addition of insect repellent strips used in food/feed handling establishments.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

### List of Subjects in 40 CFR Parts 185 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

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

## PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

**Authority:** 21 U.S.C. 346a and 348.

b. By adding new §§ 185.1975, 185.1985, and 185.3775, to read as follows:

**§ 185.1975 Dihydro-5-heptyl-2(3H)-furanone.**

The food additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 185.1985 Dihydro-5-pentyl-2(3H)-furanone.**

The food additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Enviornmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 185.3775 d-Limonene.**

The food additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in food-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

## PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

**Authority:** 21 U.S.C. 348.

b. By adding new §§ 186.1975, 186.1985, and 186.3775, to read as follows:

**§ 186.1975 Dihydro-5-heptyl-2(3H)-furanone.**

The feed additive dihydro-5-heptyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-pentyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 186.1985 Dihydro-5-pentyl-2(3H)-furanone.**

The feed additive dihydro-5-pentyl-2(3H)-furanone may be safely used in accordance with the following conditions:

(a) It is used in combination with the active ingredients d-limonene and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Enviornmental Protection Agency, and it shall be used in accordance with such label and labeling.

**§ 186.3775 d-Limonene.**

The feed additive d-limonene may be safely used in accordance with the following conditions:

(a) It is used with the active ingredients dihydro-5-pentyl-2(3H)-furanone and dihydro-5-heptyl-2(3H)-furanone in insect-repellent tablecloths and in insect-repellent strips used in feed-handling establishments.

(b) To assure safe use of the insecticide, its label and labeling shall conform to that registered by the U.S. Environmental Protection Agency, and it shall be used in accordance with such label and labeling.

[FR Doc. 95–7715 Filed 3–28–95; 8:45 am]
BILLING CODE 6560–50–F

## 40 CFR Part 300

**[FRL–5180–4]**

## Amendment to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP); CERCLIS Definition Change

**AGENCY:** Environmental Protection Agency.

**ACTION:** Amendment to change definition.

**SUMMARY:** The Environmental Protection Agency (EPA) is adopting new procedures for maintaining its Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS). CERCLIS is the data base and data management system EPA uses to track activities at sites considered for cleanup under the Comprehensive Environmental Response and Liability Act (CERCLA) (also known as Superfund).

Today's document announces the decision to remove from CERCLIS those sites that EPA has decided do not warrant further evaluation under Superfund. We specifically include sites that the Agency has given a designation of ''No Further Response Action Planned'' (NFRAP), to eliminate any possible disincentive to purchase, improve, redevelop, and revitalize sites, related to inclusion on CERCLIS.

**EFFECTIVE DATE:** This rule is effective March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Michael Cullen, Office of Program Management, Office of Emergency and Remedial Response (5201G), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346, or (703) 412–9810 in the Washington DC, metropolitan area.

**SUPPLEMENTARY INFORMATION:** Sites given a NFRAP designation will now be placed in a separate archived data base. This document reflects these decisions by instituting formal changes to the part of EPA's regulations known as the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. Specifically, EPA is changing the definition of CERCLIS, found at 40 CFR 300.5, to provide that NFRAP sites will be placed in a separate archived data base that will also be available to the public.

This amendment to the CERCLIS definition also reflects the possibility that, in the future, EPA may consider archiving other categories of sites from CERCLIS at which the Agency's Superfund program has no further involvement.

Since these changes are matters relating to internal Agency management, there is no requirement for public notice and opportunity to comment.

The NCP describes CERCLIS and NFRAP in its ''Definitions'' section, 40 CFR 300.5. CERCLIS contains the official inventory of potential CERCLA sites and supports EPA's site planning

and tracking functions. CERCLIS contains information from pre-remedial, remedial, removal and enforcement actions of the Superfund program, and has the flexibility to retrieve these actions separately for tracking, planning or analysis purposes.

When a site is identified and placed in CERCLIS, it may undergo a series of evaluations of increasing complexity. These include a Preliminary Assessment, a Site Inspection, an Expanded Site Inspection, listing on the National Priorities List (NPL), conducting a Remedial Investigation/ Feasibility Study, signing a Record of Decision detailing the remedial action which will be taken, completing all remedial actions, formally deleting the site from the NPL, taking enforcement actions against liable parties, and conducting removal actions or other actions to stabilize site conditions.

At any stage prior to listing a site on the NPL, EPA may determine that no further response action under CERCLA is appropriate, and the site is given a NFRAP designation or it may be deferred to another authority for response action. This means that no additional Federal steps under CERCLA will be taken at the site unless further information warrants such action.

According to the CERCLIS definition in § 300.5 of the NCP, a site is not removed from the CERCLIS data base after evaluations have been completed. This would include sites that have been given a NFRAP designation. This means that over 20,000 NFRAP sites continued to remain in CERCLIS even though no further action was planned.

In the revision to the NCP issued on March 8, 1990, (55 FR 8666) EPA explained that sites were not removed from the CERCLIS data base after completion of evaluations ''in order to document that the evaluation took place and to preclude the possibility that it be needlessly repeated.'' 40 CFR 300.5 (definition of CERCLIS); see also 55 FR 8692–8693. This, of course, included NFRAP sites.

Since the NCP revision, however, the CERCLIS data base has taken on more significance than EPA had intended. While inclusion of a site in CERCLIS does not represent a determination of any party's liability or a finding that any response action is necessary, numerous oral and written comments have come to EPA from property owners, the housing and banking industry, prospective purchasers of CERCLIS properties, and the general public indicating that there is an apparent yet unintended stigma attached to sites in CERCLIS. This stigma has resulted in economic drawbacks as well as the disincentive to purchase, improve, redevelop, and revitalize sites.

Because of this unintended stigma, EPA has decided to change the way it handles NFRAP sites and will exclude sites designated as NFRAP from the CERCLIS inventory. NFRAP sites will be removed from CERCLIS and archived as historical records. A NFRAP designation means that no additional steps under the Federal Superfund program will be taken at the site unless new information arrives which indicates otherwise. This archived database will be retrievable and accessible to the public upon request.

EPA Administrator Carol Browner announced the decision to remove NFRAP sites from the CERCLIS data base on January 25, 1995. Today's action formally amends the CERCLIS definition to implement the Administrator's announcement.

EPA is also considering removing from CERCLIS other categories of sites at which the EPA Superfund program has no further involvement. These sites could include sites deleted from the NPL or those being addressed by EPA's corrective action program under the Resource Conservation and Recovery Act (RCRA). In order to increase its flexibility in managing these sites on CERCLIS, EPA is also amending the CERCLIS definition to remove any statement that sites at which EPA has no further Superfund involvement will remain on CERCLIS. EPA has not made the decision on these other sites, yet, but will notify the public of any decision.

In the 1990 revision to the NCP, EPA did respond to public comments on the structure of CERCLIS and decided to leave sites on CERCLIS even after completion of evaluations, including NFRAP sites. It was not necessary at that time to take comment on this issue, nor is it necessary now that EPA is amending the NCP. This is because the Administrative Procedure Act (APA), 5 U.S.C. 553(a), exempts from requirements for public notice and opportunity to comment any ''matter relating to agency management. * * *'' 5 U.S.C. 553(a)(2). How EPA structures its CERCLIS data base and management system is a matter relating to Agency management.

To the extent it may be argued that public notice and opportunity to comment is required, EPA finds that good cause exists, under 5 U.S.C. 553(b), not to apply these requirements because this amendment has no legal effect, and no effect on choosing Superfund cleanup actions, since the decision has already been make that there will be no further Superfund action at NFRAP sites. Therefore, compliance with notice and hearing requirements are unnecessary.

According to its regulatory definition, at 40 CFR 300.5, CERCLIS is an EPA computerized database and ''*management system* that inventories and tracks releases addressed or needed to be addressed by the Superfund program.'' [Emphasis added]. It simply ''stores *management* information on all sites evaluated under Superfund.'' [Emphasis added]. *See*, Final Rule, National Oil and Hazardous Substances Pollution Contingency Plan, 55 FR 8666 at 8693 (March 8, 1990). Designations in CERCLIS are only memorializations of Agency decisions already made. Today's action does not change the public's ability to obtain any information compiled at any time in the CERCLIS data base.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous substances, Intergovernmental relations, Natural resources, Occupational safety and health, Oil pollution, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 23, 1995.

**Elliott P. Laws,**

*Assistant Administrator.*

Therefore, 40 CFR part 300 is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 is revised to read as follows:

**Authority:** 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 11735, 38 FR 21243; E.O. 12580, 52 FR 2923.

2. Section 300.5 is amended by revising the definition for ''CERCLIS'' to read as follows:

**§ 300.5 Definitions.**

* * * * *

*CERCLIS* is the abbreviation of the CERCLA Information System, EPA's comprehensive data base and data management system that inventories and tracks releases addressed or needing to be addressed by the Superfund program. CERCLIS contains the official inventory of CERCLA sites and supports EPA's site planning and tracking functions. Sites that EPA decides do not warrant moving further in the site evaluation process are given a ''No Further Response Action Planned'' (NFRAP) designation. This means that no additional federal steps under CERCLA will be taken at the site unless

future information so warrants. Sites given a NFRAP designation are placed in a separate archival data base. Inclusion of a specific site or area in the CERCLIS data base does not represent a determination of any party's liability, nor does it represent a finding that any response action is necessary.

* * * * *

[FR Doc. 95–7596 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[FCC 95–1]**

### Filing of Documents

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This order will clarify the Commission's rule regarding the filing of documents by including language stating that, unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or Commission staff acting on delegated authority, documents are deemed filed when they are received by the Commission. This order is intended to provide guidance to the public and avoid any potential uncertainty.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Donna Viert, Office of General Counsel, (202) 418–1720.

**SUPPLEMENTARY INFORMATION:**

### Order

In the matter of: Amendment of the Commission's Rules of Practice and Procedure.

Adopted: January 3, 1995.

Released: February 21, 1995.

By the Commission:

1. On September 26, 1994, Multinational Legal Services, P.C. (MLS) filed a Petition for Reconsideration or Clarification of the Commission's *Order*, FCC 94–210, released August 24, 1994, 59 Fed. Reg. 44340 (1994), by which the Commission promulgated new section 1.7 of its Rules, 47 CFR 1.7. In adopting section 1.7, the *Order* formalized a Commission practice of accepting documents as filed when they are received at a location designated by the Commission. The *Order* may have created some confusion, and to address this, we grant MLS's petition and clarify the language of section 1.7. *See* 59 FR 44340.

2. In its petition, MLS argues that section 1.7 may create uncertainty about the filing deadline for time-critical applications at the lockbox facility of the Mellon Bank in Pittsburgh, Pennsylvania. In accordance with procedural rules adopted in connection with our fee collection program, applications submitted to the lockbox facility by the next business day after an official filing deadline are considered timely filed.[1] This procedural rule allowing additional time is not, however, codified in the Code of Federal Regulations. MLS notes that this rule may therefore conflict with the newly promulgated section 1.7 which states that:

> Unless otherwise provided in this Title [47], pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

3. To avoid potential confusion, we will adopt MLS's recommendation (with one minor change) and clarify section 1.7 by including language stating that, unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or Commission staff acting on delegated authority, documents are deemed filed when they are received by the Commission.

4. In view of the foregoing and pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), it is ordered that the Petition for Reconsideration or Clarification filed by Multinational Legal Services, P.C. is granted.

5. It is further ordered that Part 1 of the Commission's Rules is amended in the manner indicated below to be effective upon publication in the **Federal Register**.

### List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

### Rule Change

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

[1] *Fee Collection Program*, 5 FCC Rcd 3558, 3565 (1990); *Public Notice, Filing of Time Critical Feeable Applications*, 67 Rad. Reg (P&F) 2d 1127 (1990); *see GAF Broadcasting Company*, 8 FCC Rcd 1742, 1744 (Aud. Serv. Div. 1993) (application received at the lockbox facility the day after the official deadline considered timely filed).

### PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

**Authority:** 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552; 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.7 is revised to read as follows:

**§ 1.7 Documents are filed upon receipt.**

Unless otherwise provided in this Title, by Public Notice, or by decision of the Commission or of the Commission's staff acting on delegated authority, pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission.

[FR Doc. 95–7700 Filed 3–28–95; 8:45 am]

BILLING CODE 6712–01–M

### 47 CFR Part 15

**[DH 95–581]**

### Closed Captioning Requirements for Computer Systems Used as Television Receivers

**AGENCY:** Federal Communications Commission.

**ACTION:** Interpretation.

**SUMMARY:** The FCC's Office of Engineering and Technology is issuing this document interpreting the requirements of the Television Decoder Circuitry Act of 1990 and the FCC rules implementing that Act, as they apply to computer systems. These requirements specify that all devices designed to receive television service must be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when the picture size of such a device is 33 cm (13 inches) or greater in size. This interpretation is intended to provide guidance for computer manufacturers and vendors with regard to the application of the closed caption circuitry requirements to computers and other related equipment that provide the capability to receive television transmissions.

**ADDRESSES:** Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Richard Engelman, Office of Engineering and Technology, (202) 776–1626.

**SUPPLEMENTARY INFORMATION:**

### Closed Captioning Requirements for Computer Systems Used As Television Receivers

Several manufacturers have requested information on the requirements for displaying closed captioning as they apply to computers that have the capability to receive television signals. This Public Notice describes the Office of Engineering and Technology's (OET) interpretation of the requirements of the Television Decoder Circuitry Act of 1990, and the rules implementing that Act, as they apply to computer systems. As indicated below, computer systems that are sold with a monitor that has a ''viewable picture'' size of 13 inches or greater and that have the capability to receive television service must be able to display closed captions transmitted on television signals. Closed captioning capability is not required for smaller monitors, for systems without television reception capability, for computers sold without monitors, or for ''plug-in'' circuit boards that add television reception capability.

Section 15.119 of the Commission's rules, and the Television Decoder Circuitry Act of 1990 (Pub. L. 101–431) upon which this rule section is based, require that all devices designed to receive television pictures broadcast simultaneously with sound be equipped with built-in decoder circuitry designed to display closed-captioned television transmissions when such a device is manufactured in the United States or imported for use in the United States, and its television picture screen is 33 cm (13 inches) or greater in size. *See* 47 CFR 15.119 and 47 U.S.C. 303(u) and 330(b).

Personal computers can now be equipped to receive and display broadcast television programming. This capability can be marketed in a variety or ways. For example, built-in TV receiver capability can be included in personal computers that are marketed as complete systems, *e.g.*, systems that include both a computer and monitor. Built-in TV receiver capability can also be included in personal computers sold without a monitor. In addition, TV receiver capability can be provided on plug-in circuit cards that can be used to add TV reception capability to an existing personal computer.

The screen sizes for TV receivers and monitors used with personal computers traditionally have been measured differently by manufacturers in the two industries. TV receiver screen size is measured on the basis of the ''viewable picture'' area, in accordance with Federal Trade Commission (FTC) regulations. *See* 16 CFR Part 410. Computer monitors traditionally are measured on the basis of the overall physical size of the picture tube. In many cases, computer monitors marketed as ¼ inches or larger actually have a viewable picture size of less than 33 cm (13 inches). We note that the majority of computer monitors being sold now have a viewable picture size that is smaller than 33 cm (13 inches), although the number of models with larger picture sizes is increasing.

OET interprets that the requirements of § 15.119 apply to computer systems that have the capability to receive TV broadcast signals and include a monitor that has a ''viewable picture'' size of 33 cm (13 inches) or larger, as measured in accordance with the FTC regulations, 16 CFR Part 410. For purposes of this interpretation, a computer system may be a single unit, with the computer and monitor in the same housing, or separate computer and monitor units.

As a practical matter, computers and monitors sold together as systems are often marketed with separate prices. This allows consumers greater flexibility in choosing a system that meets their needs. OET interprets that where computers and monitors are priced separately but sold together, *i.e.*, as part of the same business transaction, they are nonetheless computer systems for purposes of the closed caption display capability requirements and must comply with those requirements if the ''viewable picture'' of the monitor is 33 cm (13 inches) or larger.

The requirements of § 15.119 do not apply to:

—Computers or computer systems that do not have the capability to receive TV broadcast signals;
—Computers sold without monitors;
—Computer systems with monitors that do not have a viewable picture of 33 cm (13″) or larger; or,
—Separate ''plug-in '' circuit boards.

In issuing this interpretation, we wish to emphasize that we recognize the importance of closed captioning display as a feature of TV reception capability included in personal computers. We therefore will monitor the practices of the computer industry with regard to this feature, particularly with regard to the practices of selling computers and monitors together, and will consider appropriate action in the future as may be necessary to ensure this feature is adequately available to the public.

By the Chief, Office of Engineering and Technology.

Office of Engineering and Technology contact: Richard Engelman at (202) 776–1626.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 95–7650 Filed 3–28–95; 8:45 am]

**BILLING CODE 6712–01–M**

## OFFICE OF PERSONNEL MANAGEMENT

### 48 CFR Parts 1604 and 1652

**RIN 3206–AG30**

### Federal Employees Health Benefits Acquisition Regulation Filing Health Benefit Claims; Addition of Contract Clause

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim regulations with request for comments.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing interim regulations to add a new contract clause of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR). The clause clarifies for both FEHB carriers and covered individuals the circumstances under which OPM may render a decision regarding a covered individual who asks OPM to review a health benefits plan's denial of a claim if the plan has either affirmed its denial when the covered individual requested reconsideration, or failed to respond to the covered individual's request for reconsideration as provided by OPM's regulations. The clause further clarifies the circumstances under which claimants may seek court review of benefit denials under the FEHB Program. The purpose of these interim regulations is to clarify that covered individuals who wish to bring legal action regarding a denial of an FEHB benefit must pursue such claim against OPM. Further, the interim regulations clarify the administrative review process that must precede legal action in the courts.

**DATES:** These interim regulations are effective March 29, 1995. Comments must be received on or before May 30, 1995.

**ADDRESSES:** Send written comments to Lucretia F. Myers, Assistant Director for Insurance Programs, Retirement and Insurance Service, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; or deliver to OPM, Room 3451, 1900 E Street NW., Washington, DC; or FAX to (202) 606–0633.

**FOR FURTHER INFORMATION CONTACT:** Margaret Sears, (202) 606–0004.

**SUPPLEMENTARY INFORMATION:** Historically, OPM has required that

covered individuals who want to bring suit because an FEHB carrier has denied their claim for health benefits must sue the carrier, not OPM. These interim regulations provide that legal actions arising out of a denial of FEHB benefits should be brought against OPM rather than the FEHB carrier that made the initial denial decision. Because OPM has the authority under the FEHB law to order the carrier to pay the claim, OPM has determined it is appropriate under current statute for the covered individuals to bring suit against OPM if OPM declines to order the carrier to pay the claim. The clause clarifies the process and circumstances for bringing legal actions under the FEHB Program and gives the administrative review process that must be completed before suit is brought.

The legislative history of § 8902(j), title 5, United States Code, shows that Congress intended OPM (at that time the Civil Service Commission) to provide an administrative appeal process, binding upon the carriers, that would save covered individuals the expense and delay of being forced into the courts to recover on meritorious claims for benefits. Based upon this directive and its central role in the administration of the FEHB Program, OPM established a detailed administrative review process for benefits claims leading to a final decision on such claims by OPM. It is OPM's view that this administrative review process must be followed before legal action is pursued in the courts. Further, the matter to be reviewed by a court upon appeal is the OPM decision affirming the carrier's denial of benefits, with the court's review being limited to an examination of OPM's administrative decision to deny the claim for payment or services.

Health insurance contracts under the FEHB Program are Federal contracts under 5 U.S.C., chapter 89. Accordingly, legal actions concerning disputes arising or relating to those contracts are controlled by Federal, rather than State law. Congress, in the FEHB Act, mandated Federal uniformity for all matters that relate to (1) the nature or extent of coverage; (2) benefits; and (3) payment of benefits under the FEHB Program. By statute, all health insurance contracts require the carrier to agree to pay or provide a health service or supply in an individual case if OPM finds that the covered individual is entitled to the benefit under the terms of the contract. Congress also directed OPM to take a central role in determining whether a health service or supply should be provided in individual cases to covered individuals and, if it should be provided, to require carriers to pay for such health service or supply. These interim regulations reaffirm the principle of uniformity in the FEHB Program by providing that in judicial disputes regarding the denial of a health benefits claim, review is to be limited to the record that was before OPM and that was the basis of the OPM decision to disallow the benefit. In the event that an appropriate court concludes that benefits should have been awarded under the FEHB Act, the court possesses ample authority to require OPM to order that such payments be made to the covered individual from the carrier. These interim regulations clarify that OPM intends for its decision to be upheld unless the Court concludes that the OPM decision affirming the carrier's denial of benefits was inconsistent with the standard for final agency action under applicable Federal law.

The new clause reflects the administrative review procedures that must precede court review. These procedures are prescribed by regulations at 5 CFR 890.105 and reflects minor changes that OPM is making to 5 CFR 890.105 by interim regulations being published in conjunction with this interim regulation The new clause also reflects regulations and 5 CFR 890.107 regarding court review and reflects changes OPM is making to 5 CFR 890.107 by regulations also being published in conjunction with this interim regulations.

OPM proposes to incorporate these procedures into the FEHB contract by adding a new clause 1652.204–72, Filing Health Benefit Claims/Court Review of Disputed Claims, to Subpart 1652.2 of the Federal Employees Health Benefits Acquisition Regulation (FEHBAR).

## 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 merely incorporates administrative procedures and regulatory requirements into FEHB contracts.

## List of Subjects in 48 CFR Parts 1604 and 1652

Government employees, Government procurement, Health insurance.

Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, OPM proposes to amend 48 CFR chapter 16 as follows:

## PART 1604—ADMINISTRATIVE MATTERS

1. The authority citation for parts 1604 and 1652 continue to read as follows:

**Authority:** 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In part 1604 subpart 1604.71 is added to read as follows:

## Subpart 1604.71—Disputed Health Benefit Claims

### 1604.7101 Filing Health Benefit Claims/ Court Review of Disputed Claims.

Guidelines for an Federal Employees Health Benefit (FEHB) Program covered individual to file a claim for payment or service and for legal actions on disputed health benefit claims are found at 5 CFR 890.105 and 890.107, respectively. The contract clause at 1652.204–72 of this chapter, reflecting this guidance, must be inserted in all FEHB Program contracts.

## PART 1652—CONTRACT CLAUSES

3. Subpart 1652.2 is amended by adding section 1652.204–72 to read as follows:

## Subpart 1652.2—Texts of FEHBP Clauses

### 1652.204–72 Filing Health Benefit Claims/ Court Review of Disputed Claims.

As prescribed in 1604.7101 of this chapter, the following clause must be inserted in all FEHB Program contracts.

FILING HEALTH BENEFIT CLAIMS/COURT REVIEW OF DISPUTED CLAIMS

(a) *General.* The Carrier resolves claims filed under the Plan. All health benefit claims must be submitted initially to the Carrier. If the Carrier denies a claim (or a portion of a claim), the covered individual may ask the Carrier to reconsider its denial. If the Carrier affirms its denial or fails to respond as required by paragraph (b) of this clause, the covered individual may ask OPM to review the claim. A covered individual must exhaust both the Carrier and OPM review processes specified in this clause before seeking judicial review of the denied claim.

(b) *Time limits for reconsidering a claim.* (1) The covered individual has 1 year from the date of the notice to the covered individual that a claim (or a portion of a claim) was denied by the Carrier in which to submit a written request for reconsideration to the Carrier.

(2) The Carrier has 30 days after the date of receipt of a timely-filed request for reconsideration to:

(i) Affirm the denial in writing to the covered individual;

(ii) Pay the bill or provide the service; or

(iii) Request from the covered individual or provider additional information needed to

make a decision on the claim. The Carrier must simultaneously notify the covered individual of the information requested if it requests additional information from a provider. The Carrier has 30 days after the date the information is received to affirm the denial in writing to the covered individual or pay the bill or provide the service. The Carrier must make its decision based on the evidence it has if the covered individual or provider does not respond within 60 days after the date of the Carrier's notice requesting additional information. The Carrier must then send written notice to the covered individual of its decision on the claim. The covered individual may request OPM review as provided in paragraph (b)(3) of this clause if the Carrier fails to act within 30 days after the covered individual's request for reconsideration or the Carrier's receipt of additional information.

(3) The covered individual may write to OPM and request that OPM review the Carrier's decision if the Carrier either affirms its denial of a claim or fails to respond to a covered individual's written request for reconsideration within 30 days after the date it receives the request or within 30 days after the date it receives the additional information requested. The covered individual must submit the request for OPM review within the time limit specified in paragraph (e)(1) of this clause.

(4) The Carrier may extend the time limit for a covered individual's submission of additional information to the Carrier when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the additional information.

(c) *Information required to process requests for reconsideration.* (1) The covered individual must put the request to the Carrier to reconsider a claim in writing and give the reasons, in terms of applicable brochure provisions, that the denied claim should have been approved.

(2) If the Carrier needs additional information from the covered individual to make a decision, it must:

(i) Specifically identify the information needed;

(ii) State the reason the information is required to make a decision on the claim;

(iii) Specify the time limit (60 days after the date of the Carrier's request) for submitting the information; and

(iv) State the consequences of failure to respond within the time limit specified, as set out in paragraph (b)(2) of this clause.

(d) *Carrier determinations.* The Carrier must provide written notice to the covered individual of its determination. If the Carrier affirms the initial denial, the notice must inform the covered individual of:

(1) The specific and detailed reasons for the denial;

(2) The covered individual's right to request a review by OPM; and

(3) The requirement that requests for OPM review must be received within 90 days after the date of the Carrier's denial notice and include a copy of the denial notice as well as documents to support the covered individual's position.

(e) *OPM review.* (1) If the covered individual seeks further review of the denied claim, the covered individual must make a request to OPM to review the Carrier's decision. Such a request to OPM must be made:

(i) Within 90 days after the date of the Carrier's notice to the covered individual that the denial was affirmed; or

(ii) If the Carrier fails to respond to the covered individual as provided in paragraph (b)(2) of this clause, within 120 days after the date of the covered individual's timely request for reconsideration by the Carrier; or

(iii) Within 120 days after the date the Carrier requests additional information from the covered individual, or the date the covered individual is notified that the Carrier is requesting additional information from a provider. OPM may extend the time limit for a covered individual's request for OPM review when the covered individual shows he or she was not notified of the time limit or was prevented by circumstances beyond his or her control from submitting the request for OPM review within the time limit.

(2) In reviewing a claim denied by the Carrier, OPM may

(i) Request that the covered individual submit additional information;

(ii) Obtain an advisory opinion from an independent physician;

(iii) Obtain any other information as may in its judgment be required to make a determination; or

(iv) Make its decision based solely on the information the covered individual provided with his or her request for review.

(3) When OPM requests information from the Carrier, the Carrier must release the information within 30 days after the date of OPM's written request unless a different time limit is specified by OPM in its request.

(4) Within 90 days after receipt of the request for review, OPM will either:

(i) Give a written notice of its decision to the covered individual and the Carrier; or

(ii) Notify the individual of the status of the review. If OPM does not receive requested evidence within 15 days after expiration of the applicable time limit in paragraph (e)(3) of this clause, OPM may make its decision based solely on information available to it at that time and give a written notice of its decision to the covered individual and to the Carrier.

(f) *Court review.* (1) A suit to compel enrollment under § 890.102 of Title 5, Code of Federal Regulations, must be brought against the employing office that made the enrollment decision.

(2) A suit to review the legality of OPM's regulations under this part must be brought against the Office of Personnel Management.

(3) Federal Employees Health Benefits (FEHB) carriers resolve FEHB claims under authority of Federal statute (chapter 89, title 5, United States Code). A covered individual may seek judicial review of OPM's final action on the denial of a health benefits claim. A legal action to review final action by OPM involving such denial of health benefits must be brought against OPM. The recovery in such a suit will be limited to the amount of benefits in dispute.

(4) An action under paragraph (f)(3) of this clause to recover on a claim for health benefits:

(i) May not be brought prior to exhaustion of the administrative remedies provided in paragraphs (a) through (e) of this clause;

(ii) May not be brought later than December 31 of the third year after the year in which the care or service was provided; and

(iii) Will be limited to the record that was before OPM when it rendered its decision affirming the Carrier's denial of benefits.

(End of Clause)

[FR Doc. 95–7792 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

## 48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1840, 1841, 1842, 1845, 1851, 1852, and 1870

**[NFSD 89–18]**

**RIN 2700–AB83**

## NASA FAR Supplement; Miscellaneous Amendments

**AGENCY:** Office of Procurement, Acquisition Liaison Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal and administrative matters, such as the NASA FAR Supplement rewrite, procurement integrity, cost-reimbursement contracts, architect-engineer services, acquisition of utility services, and audit tracking and resolution.

**EFFECTIVE DATE:** March 31, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. David K. Beck, (202) 358–0482; e-mail: dbeck@proc.hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:**

### Background

A cross-reference is added to 1813.7104(a) due to FAC 90–24. The FAC allows the head of contracting activity to exclude contracting officers (with micro-purchase authority only) from the procurement integrity definition of ''procurement official'' if the HCA determines that it is unlikely that the contracting officer's acquisitions will exceed $20,000 in any 12-month period.

Sections 1816.301, 1816.301–3 and 1816.403 are removed due to FAC 90–24's removal of FAR 16.301 and 16.403.

Various changes include: (i) Lowering the selection official level for A–E contracts from the head of the installation to an executive level manager in the requirements office; (ii) eliminate 1836.600–70 on inter-organization acquisition coverage through NASA Headquarters Code HS; and (iii) upgrade the ethics certificate associated with selection of A–E contracts.

Subpart 1803.3 is redesignated as Part 1841. NFS clauses on utility services are removed where new FAR clauses provide adequate coverage.

Changes are necessary for NASA's audit followup system to comply with Office of Management and Budget (OMB) Circular A–50, ''Audit Followup.'' In addition, they streamline the coverage on audit tracking and resolution and relocate the coverage within the NASA FAR Supplement.

Miscellaneous changes and corrections are found in the following sections: 1801.104–370; 1801.603–2 (reference to SF 171 deleted); Subpart 1804.8 (title change of subpart heading); 1804.805 (title change to section heading); 1806.303–1; 1808.002–71 and –76 (removed due to fAR coverage); Subpart 1808.7 (title change to subpart heading and ''workshop'' changed to new FAR terminology ''nonprofit agency''; 1815.613–71; 1819.708–70; 1825.403–70; 1832.402; 1842.202–70; 1845.106–70; 1845.405; 1845.407; 1845.608–6; 1845.610–2; 1845.7203; 1845.7205; 1845.7213; 1851.102; 1870.103, App. I. Chapter 7, Appendix C; and 1870.303, App. I, Chapter 4.

**Availability of NASA FAR Supplement**

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, telephone number (202) 783–3238. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

**Impact**

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not impose any reporting or record keeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1840, 1841, 1842, 1845, 1851, 1852, and 1870**

Government procurement.

**Thomas S. Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Chapter 18 is amended as follows:

## PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1801, 1804, 1806, 1808, 1813, 1815, 1816, 1832, 1836, 1842, 1845, 1851, 1852, and 1870 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

### 1801.104–370 [Amended]

2. In section 1801.104–370, paragraph (a), ''Ms. Joan Brooks (202–358–2105)'' is revised to read ''Mrs. Cynthia O'Bryant (202–358–1248)''.

3. In section 1801.104–370, paragraphs (e) and (f), ''Code JBD–4'' is revised to read ''Code JOB–19''.

4. In section 1801.104–370, paragraph (f), ''Code HS, Gloria Shively (202–358–2080)'' is revised to read ''Code HP, Cynthia O'Bryant (202–358–1248)'' and ''Code JM–2'' is revised to read ''Code JMS''.

### 1801.603–2 [Amended]

5. In section 1801.603–2, paragraph (d)(1) introductory text, the phrase ''(or SF 171)'' is removed.

## PART 1804—ADMINISTRATIVE MATTERS

### Subpart 1804.8 [Amended]

6. In subpart 1804.8, the title ''Contract Files'' is revised to read ''Government Contract Files''.

### 1804.805 [Amended]

7. In section 1804.805, the section heading ''Disposal of contract files.'' is revised to read ''Storage, handling, and disposal of contract files.''

## PART 1806—COMPETITION REQUIREMENTS

### 1806.303–1 [Amended]

8. In section 1806.301–1, paragraph (b), ''Code IRD'' is revised to read ''Code IR''.

## PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### 1808.002–71 [Removed]

9. Section 1808.002–71 is removed.

### 1808.002–76 [Removed]

10. Section 1808.002–76 is removed.

### Subpart 1808.3 [Removed]

11. Subpart 1808.3 is removed.

### Subpart 1808.7 [Amended]

12. The title of subpart 1808.7 ''Acquisition From The Blind And Other Severely Handicapped'' is revised to read ''Acquisition From Nonprofit Agencies Employing People Who Are Blind Or Severely Disabled''.

### 1808.705–1 [Amended]

13. In section 1808.705–1, paragraph (b), the phrase ''to obtain workshop-produced supplies'' is revised to read ''to obtain nonprofit agency-produced supplies''.

## PART 1813—SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

### 1813.7104 [Amended]

14. In section 1813.7104, the following sentence is added to the end of paragraph (a) to read as follows:

''See 48 CFR (FAR) 3.104–4(h)(5) for procurement integrity requirements.''

## PART 1815—CONTRACTING BY NEGOTIATION

### 1815.871 and 1815.872 [Removed]

15. Sections 1815.871 and 1815.872 are removed.

## PART 1816—TYPES OF CONTRACTS

### 1816.301 and 1816.301–3 [Removed]

16. Sections 1816.301 and 1816.301–3 are removed.

### 1816.403 [Removed]

17. Section 1816.403 is removed.

## PART 1832—ADVANCE PAYMENTS

### 1832.402 [Removed]

18. In section 1832.402, paragraph (a)(1) is amended by removing the second sentence.

## PART 1836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

### Subpart 1836.6 [Amended]

### 1836.600 and 1836.600–70 [Removed]

19. and 20. Sections 1836.600 and 1836.600–70 are removed.

### 1836.602–2 [Amended]

21. Sections 1836.602–2 is revised to read as follows:

### 1836.602–2 Evaluation boards.

In compliance with 48 CFR (FAR) 36.602–2, the person designated as the

selection authority, unless Field Installation Management Instructions designate higher authority, shall establish an architect-engineer selection board to be composed of at least three voting members. Membership shall at least include: one currently registered architect or professional engineer, who shall serve as the board chairperson; an appropriate official from the requiring office; and, an appropriate technical official familiar with any unique subject matter (see 48 CFR (FAR) 36.102, Definitions, ''Architect-engineer services'') critical to the requirement. Each board shall include an appropriate procurement official (a contracting officer, if feasible) as an ad hoc advisor to the board and the selection authority. Where appropriate, a procurement official may serve as a voting member on evaluation boards. Appointment of non-Government employees as voting members is not authorized.

22. Section 1836.602–4 is revised to read as follows:

**1836.602–4 Selection authority.**

The first level manager above the requirement office who is serving in grade GS 16 or above under the General Schedule or in a comparable or higher position under another schedule, or otherwise, is designated as the selection authority for purposes of 48 CFR (FAR) 36.602.4.

23. Section 1836.602–5 is revised to read as follows:

**1836.602–5 Short selection processes for contracts not to exceed the small purchase limitation.**

(a) Use of the procedures at 48 CFR (FAR) 36.602–5 (a) or (b) is at the discretion of the selection authority specified in 1836.602–4.

(b) The selection authority specified in 1836.602–4 is designated as the selection authority for purposes of 48 CFR (FAR) 36.602–5(b)(2).

**1836.602–70 [Amended]**

24. In section 1836.602–70, paragraph (b)(1), ''the Comptroller'' is revised to read ''the Chief Financial Officer (CFO)/Comptroller''.

25. In section 1836.602–71, paragraph (a)(1) is revised to read as follows:

**1836.602–71 Conflict of interest.**

(a)(1) All persons participating in an architect-engineer evaluation, review or selection activity shall have a written certification on file in NASA stating knowledge of and compliance with the Office of Government Ethics' Standards of Ethical Conduct for Employees of the Executive Branch (August 1992) and the NASA Supplement (September 28, 1994) to the Office of Government Ethics's Standard of Ethical Conduct for Employees of the Executive Branch (August 1992). The minimum certification shall be:

*Certification*

I, the undersigned, hereby certify that I have: (i) read the Office of Government Ethics' Standard of Ethical Conduct for Employees of the Executive Branch (August 1992) and the NASA Supplement (September 28, 1994) to the Office of Government Ethics' Standard of Ethical Conduct for Employees of the Executive Branch (August 1992); (ii) filed the relevant [insert ''Standard Form 278'' for any employee who's annual salary is 120 percent above step one of grade 15 of the General Schedule (GS) or ''Standard Form 450'' for employees whose annual salary is at or below step ten of grade 15 of the General Schedule (GS)]; and, (iii) examined the attached list of competitors for the [Title] project before the architect-engineer selection board. I further certify that I have no financial or other personal interest in these firms.

_____

(Signature)

_____

(Date)

(End of certification)

* * * * *

**1836.602–71 [Amended]**

26. In paragraph (a)(3) of section 1836.602–71, the word ''center'' is revised to read ''installation'' in two occurrences.

## PART 1840 [ADDED AND RESERVED]

27. Part 1840 is added and reserved.

## PART 1841—ACQUISITION OF UTILITY SERVICES

28. Part 1841 is added as set forth below:

**PART 1841—ACQUISITION OF UTILITY SERVICES**

**Subpart 1841.1—General**

1841.101 Definitions.

**Subpart 1841.2—Acquiring Utility Services**

1841.201 Policy.
1841.204 GSA areawide contracts.
1841.205 Separate contracts.
1841.205–70 Renewal of contracts.
1841.205–71 Headquarters requirement for copies of contracts.
1841.205–72 Contents of a negotiated utility service contract.
1841.205–73 Authorization for procurement of wellhead natural gas.
1841.205–74 Utility service narrative.
1841.205–75 Contracts requiring Headquarters approval.
1841.206 Interagency agreements.

**Subpart 1841.4—Administration**

1841.402 Rate changes and regulatory intervention.

**Subpart 1841.5—Solicitation Provision and Contract Clauses**

1841.501 Solicitation provision and contract clauses.

**Authority:** 42 U.S.C. 2473(c)(1).

### Subpart 1841.1—General

**1841.101 Definitions.**

*Utility suppliers*, as used in this subpart, may be quasi-public service corporations, private concerns, municipalities, associations, or cooperatives. They generally operate in a franchised territory without competition, so they may frequently be in a sole-source position. Under common law, public utilities must render service at reasonable rates and without discrimination. Their operations, management, rates, and profits are usually regulated by Federal, State, or local regulatory bodies, but absence of a regulatory body does not necessarily mean a complete lack of control. Administrative remedies pursuant to enabling statutes may be pursued or complaints may be taken to a court of competent jurisdiction.

### Subpart 1841.2—Acquiring Utility Services

**1841.201 Policy.**

(a) Requirements for utility services shall be determined by technically qualified personnel who will assist the contracting officer as required. Before soliciting technical assistance outside the agency (see 48 CFR (FAR) 41.203), technical personnel shall contact the Environmental Management Division (Code JE), NASA Headquarters.

(b) Appropriated funds may not be used to purchase electricity in a manner inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements (Pub. L. 100–202, Sec. 8093, 101 Stat. 1329–79). Before acquiring electric utility service, the contracting officer shall determine whether the manner of acquisition, in particular, competitive acquisition under 48 CFR (FAR) 41.205(b), would be inconsistent with state law. Section 8093 of Pub. L. 100–202 is not intended to affect transfers of electricity to agencies from Federal power marketing agencies or the Tennessee Valley Authority, such as NASA's power allocation from the Western Area Power Marketing Administration. Such transfers do not constitute ''purchases'' for purposes of section 8093.

**1841.204 GSA Areawide Contracts.**

(a) GSA publishes a checklist of utility services available under its areawide public utility contracts. The checklist specifies contract numbers,

expiration dates, companies, and areas serviced. Copies of the checklist may be obtained from GSA, Public Utility Division (PPU), Public Buildings Service, Washington, DC 20405 ((202) 501–3994).

(b) In determining whether a GSA area-wide public utility contract is adequate to meet requirements, procurement officers should consider (1) the areawide contract rates and volume of service required, (2) any unusual characteristics of the service required, (3) any special equipment or facility requirements, (4) any special technical contract provisions required, and (5) any other special circumstances.

(c) If a procurement officer finds that a separate negotiated contract would be more advantageous to the Government than the GSA areawide public utility contract, the procurement officer shall submit a request to the Associate Administrator for Procurement, NASA Headquarters (Code HS), for a waiver of the requirement to use the GSA areawide public utility contract. The request shall explain the merit of a separately negotiated contract.

**1841.205 Separate contracts.**

**1841.205–70 Renewal of contracts.**

(a) A contract may be renewed or extended by option, provided that the contract is not in effect for more than a total of 5 successive years.

(b) Contracting officers shall consider selecting an expiration date for the contract sufficiently after the end of the fiscal year to ensure that appropriations will be available when the option is exercised.

**1841.205–71 Headquarters requirement for copies of contracts.**

The contracting officer shall forward, promptly after execution, one copy of each contract, service authorization form, memorandum of understanding, and modification to the Associate Administrator for Procurement, NASA Headquarters (Code HS) and the Environmental Management Division, NASA Headquarters (Code JE).

**1841.205–72 Contents of a negotiated utility service contract.**

(a) All negotiated utility service contracts estimated to exceed $2,500 annually shall be written in accordance with the directions in paragraphs (a)(1) through (5) of this section:

(1) *SF 26.* Use Standard Form 26 (see 48 CFR (FAR) 53.215–1(b)).

(2) *Appendix A.*

(i) Include the rate schedule, which shall consist of—

(A) The published rate schedule of the contractor approved or established by a Federal, State, or other regulatory body; or

(B) The rate schedule negotiated between the contractor and the Government.

(ii) The rate schedule shall bear the legend ''Appendix A, attached to and made a part of Contract No. _____,'' and be entitled ''Rate Schedule.'' Each page shall indicate its number and the total number of pages comprising Appendix A, as, for example, ''page 1 of 3.'' In addition to stating the rate applicable to the contract, Appendix A shall include any applicable rules or regulations (whether established by the regulatory body, the contractor, or negotiation between the contractor and the Government) pertaining to the Rate Schedule. Appendix A may provide for payment to the contractor of a nonrecurring, nonrefundable fee not exceeding $1,000 for the costs of connecting the contractor's facilities to, and disconnecting them from, the Government's facilities, if the contract period is less than 6 months. In all other instances where a connection charge is involved, the ''Connection Charge'' clause (48 CFR (FAR) 52.241–9) and Appendix C (see paragraph (a)(4) of this section) shall be included in the contract.

(3) *Appendix B.* Include the service specifications applicable to the contract, which shall consist of a specially drafted attachment to the contract bearing the legend ''Appendix B, attached to and made a part of Contract No._____,'' and the title of the appropriate service specifications. Each page shall indicate its number and the total number of pages comprising Appendix B, as, for example, ''page 1 of 3.'' Such appendix shall contain as a minimum—

(i) The premises to be served;

(ii) An estimate of the service requirements;

(iii) The point of delivery to the Government;

(iv) A description of the service;

(v) A statement of how the service is to be measured for purposes of billing; and

(vi) A statement of the capacity and flow of the service.

(4) *Appendix C.* Include the connection charge schedule required whenever the contract includes the connection charge clause at 48 CFR (FAR) 52.241–9 or the termination clause at 48 CFR (FAR) 52.241–10. It shall bear the legend ''Appendix C, attached to and made a part of Contract No. _____,'' and be entitled ''Connection Charge Schedule.'' Each page shall indicate its number and the total number of pages comprising Appendix C, as, for example, ''page 1 of 3.'' The appendix shall contain as a minimum a detailed description of the new facilities to be furnished by the contractor.

(5) Include any contract clauses required by 1841.501 or 48 CFR (FAR) 41.501.

(b) Any negotiated utility service contract estimated not to exceed $2,500 annually shall consist of—

(1) Standard Form 26 (48 CFR (FAR) 53.215–1(b));

(2) An Appendix A (see paragraph (a)(2) of this section); and

(3) Any contract clauses required by 1841.501 or 48 CFR (FAR) 41.501.

**1841.205–73 Authorization for procurement of wellhead natural gas.**

(a) Acquisition of wellhead natural gas and interstate transportation of the natural gas to locally franchised distribution utility companies' receipt points (city gate) is considered the procurement of supplies rather than the procurement of public utility services described in 48 CFR (FAR) part 41. Therefore, wellhead natural gas and interstate transportation of such gas should be obtained directly by NASA under applicable authorities and FAR procedures governing the acquisition of supplies. Redelivery of the gas from the city gate to the NASA facility is considered a utility service since it is provided only by the locally franchised utility. GSA is responsible for obtaining an appropriate contract for the redelivery service in accordance with 48 CFR (FAR) 41.204.

(b) GSA provides assistance to Federal agencies in the procurement of natural gas wellhead supplies. Contracting officers requiring assistance in determining the feasibility of procuring natural gas supplies on a facility by facility basis may contact General Services Administration, Public Building Services, Public Utilities Division, Code PPU ((202) 501–3994). In contacting GSA, contracting officers should provide data pertaining to present gas usage exceeding 50,000 Mcf per year. GSA has found that 50,000 Mcf is the annual volume below which wellhead purchases may not be economically feasible.

**1841.205–74 Utility service narrative.**

(a) Before initiating negotiations, the contracting officer shall submit a Utility Service Narrative for proposed procurements for new utilities services, renegotiations or extensions of existing utility services, or existing contracts that require a negotiation for change of rate schedules, to the Associate Administrator for Procurement (Code

HS), NASA Headquarters. The Utility Service Narrative shall include—

(1) A brief technical description of the service required or being furnished;

(2) Justification of the reasonableness of the proposed rate;

(3) An outline of the field installation's proposed negotiation tactics, basis for position, and any alternative position;

(4) An estimate of the annual cost of service; and

(5) Other related items, as applicable, such as connection charges, termination liability, facilities charges, requirement for Government capital costs, or any unusual factors affecting the procurement.

(b) The Associate Administrator for Procurement (Code HS), with the coordination of the Environmental Management Division (Code JE), will review the information submitted under paragraph (a) of this section. If NASA Headquarters desires to participate in the negotiations, the Associate Administrator for Procurement (Code HS), NASA Headquarters, shall inform the contracting officer within 30 days after receipt of the Utility Service Narrative.

#### 1841.205–75 Contracts requiring Headquarters approval.

Contracts and supplemental agreements for utility services shall be submitted to the Associate Administrator for Procurement, NASA Headquarters (Code HS), for approval as required by 48 CFR 1804.7203 and 1807.71.

#### 1841.206 Interagency agreements.

(a) The Department of Defense (DOD) enters into areawide fuel oil and other energy-service contracts. DOD areawide contracts provide that the contractor shall, upon receipt of an order in the form prescribed by the contract, furnish the service involved without further negotiations as to rates and charges, in accordance with the established and field rate schedules applicable to the service.

(b) When procuring utility services from another Government agency by cross-servicing, the procurement office shall use a memorandum of understanding specifying the services to be provided and the conditions under which they will be supplied. A Utility Service Narrative shall be submitted in accordance with 1841.205–74.

### Subpart 1841.4—Administration

#### 1841.402 Rate changes and regulatory intervention.

(a) When the contractor notifies the contracting officer as provided in the change of rates clause at 48 CFR (FAR) 52.241–7, or whenever the contractor requests that rate changes be negotiated, as provided in the change in rates clause at 48 CFR (FAR) 52.241–8, the contracting officer shall notify the Associate Administrator for Procurement, NASA Headquarters (Code HS) and the Environmental Management Division, NASA Headquarters (Code JE). The notification shall include sufficient information to permit a determination of the monetary effect of the proposed changes, a recommendation under paragraph (a) (1) or (2) of this section, and the basis for the recommendation.

(1) When notice is received that the contractor has filed an application for rate changes before the local regulatory body, the contracting officer shall recommend whether or not the Government should intervene at the hearing on the application. If it is recommended that the Government intervene, the recommendation shall be accompanied by a statement containing the basis for intervention and the extent to which the installation can support intervention by presenting testimony, preparing exhibits, and furnishing legal counsel.

(2) When notice is received that the contractor requests that rate changes be negotiated, the contracting officer shall recommend the position to be taken by the Government regarding the rate changes and state the extent to which installation personnel are available to support this position.

(b) The Associate Administrator for Procurement, NASA Headquarters, with the technical assistance of the Environmental Management Division (Code JE), NASA Headquarters, shall furnish the contracting officer a recommendation concerning the proposed rate changes and the extent to which NASA Headquarters will participate in the intervention before the local regulatory body or in negotiations with the contractor. Before recommending any action, the Associate Administrator for Procurement, NASA Headquarters shall, as necessary, coordinate with other staff offices or divisions, or other Government agencies. The contracting officer shall await the instructions of the Associate Administrator for Procurement, NASA Headquarters, for at least 30 calendar days before submitting the matter to GSA (see 48 CFR (FAR) 41.402(b)) or taking other action concerning the proposed rate changes.

### Subpart 1841.5—Solicitation Provision and Contract Clauses

#### 1841.501 Solicitation provision and contract clauses.

The contracting officer shall insert the clause at 48 CFR 1852.241–70, Renewal of Contract, whenever it is desirable that the utility service be provided under the same terms and conditions for more than 1 year (see 1841.205–70).

## PART 1842—CONTRACT ADMINISTRATION

#### 1842.202–70 [Amended]

29. In section 1842.202–70, paragraph (d), ''Headquarters Supply and Equipment Management Office, Code JLE'' is revised to read ''Headquarters Logistics Management Office, Code JLG''.

### Subpart 1842.73 [Added]

30. Subpart 1842.73 is added as set forth below:

### Subpart 1842.73—Audit Tracking and Resolution

#### 1842.7301 NASA external audit followup system.

(a) This section implements OMB Circular No. A–50, NASA Management Instruction (NMI) 9970.1A, Audit Followup, and NASA Audit Followup Handbook 9970.2, which provide more detailed guidance. Recommendations for external audits (contracts and OMB Circulars No. A–128, Audits of State and Local Governments, and A–133, Audits of Institutions of Higher Learning and Other Non-Profit Institutions) shall be resolved by formal review and approval procedures analogous to those at 48 CFR 1815.807–71.

(b) The external audit followup system tracks all contract and OMB Circular A–128 or A–133 audits where NASA has resolution and disposition authority. The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but at a maximum, within 6 months of the date of the audit report.

(c) (1) The identification and tracking of contract audit reports under NASA cognizance are accomplished in cooperation with DCAA by means of the DCAA form, Contract Audit Followup Summary Sheet. The use of this form by DCAA and NASA is covered in Chapter 6 of the NASA Audit Followup Handbook.

(2) Identification and tracking of A–128 and A–133 audit reports are accomplished in cooperation with the

NASA Office of the Inspector General (OIG) by means of a transmittal memorandum. A transmittal memorandum is sent by the OIG to the procurement officer of each NASA field installation having an award (contract, grant, or other agreement) covered by the audit report. The transmittal memorandum will identify whether there were any audit findings.

(d) (1) Chapter 6 of the NASA Audit Followup Handbook identifies which contract audit reports are reportable semiannually to Code HC.

(2) Only trackable A–128 and A–133 audit reports involving the following shall be reported semiannually to Code HC—

(i) A significant management control issue; or

(ii) For an individual NASA award, either the lower of 10 percent or $10,000 of the costs incurred in the period covered by the audit are questioned; or for institution-wide issues, the lower of 10 percent or $10,000 of the total costs incurred involving Government funds for the period covered by the audit are questioned.

(e) (1) The resolution and disposition of contract audits is covered by Chapter 6 of the NASA Audit Followup Handbook.

(2) The resolution and disposition of A–128 and A–133 are handled as follows:

(i) Audit findings pertaining to an individual NASA award are the responsiblility of the procurement officer administering that award.

(ii) Audit findings having an institution-wide impact are the responsibility of the cognizant Federal agency. OMB's January 6, 1986, **Federal Register** Notice (51 FR 552), titled ''Federal Agencies Responsible for Cost Negotiation and Audit of State and Local Governments,'' provides cognizant agency assignments for OMB Circular A–128. For organizations subject to OMB Circular A–133, the cognizant agency is either assigned pursuant to OMB Circular A–88, ''Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions,'' or if not formally assigned, it is based on which Federal agency provided the largest amount of funds for the audited period. In such cases where NASA is the cognizant Federal agency, audit resolution and disposition is the responsibility of the procurement officer for the ''cognizant field installation,'' i.e., the field installation having the largest total award dollar amount for the audited period. A copy of the memorandum dispositioning the findings shall be provided by each field installation having resolution responsibility for the particular report to the OIG Center office within whose geographic area of responsibility the audited organization is located.

## PART 1845—GOVERNMENT PROPERTY

**1845.106–70 [Amended]**

31. In section 1845.106–70, paragraph (e), ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)''.

**1845.405 [Amended]**

32. In section 1845.405, paragraph (b), ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)'' and ''Code IRD'' is revised to read ''Code IR''.

**1845.407 [Amended]**

33. In section 1845.407, paragraph (a), ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)''.

**1845.608–6 [Amended]**

34. In section 1845.608–6, ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)''.

**1845.610–2 [Amended]**

35. In section 1845.610–2, ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)''.

**1845.7203 [Amended]**

36. In section 1845.7203, ''Supply and Equipment Management Office is revised to read ''Logistics Management Office'' and ''Code JLE'' is revised to read ''Code JLG'' in two occurrences.

**1845.7205 [Amended]**

37. In section 1845.7205, paragraph (f)(1), ''Code JLE'' is revised to read ''Code JLG''.

38. In section 1845.7205, paragraph (i), ''Code JLE'' is revised to read ''Code JLG''.

**1845.7213 [Amended]**

39. In section 1845.7213, paragraph (c)(1) introductory text, ''Supply and Equipment Management Office (Code JLE)'' is revised to read ''Logistics Management Office (Code JLG)''.

## PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

40. In section 1851.102, the first sentence of paragraph (b) is revised to read as follows:

**1851.102 Authorization to use Government supply sources.**

(a) * * *

(b) The contracting officer shall forward letters of authorization to the installation's Logistics Management Officer, Attention: Activity Address Code Coordinator, who will forward them to the Logistics Management Office, NASA Headquarters (Code JLG), for verification and transmittal to GSA. * * *

* * * * *

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**1852.208–70, 1852.208–71, 1852.208–72, 1852.208–73, 1852.208–74, 1852.208–76, 1852.208–77, 1852.208–78, 1852.208–79, 1852.208–80, 1852.208–83 [Removed]**

41. Sections 1852.208–70, 1852.208–71, 1852.208–72, 1852.208–73, 1852.208–74, 1852.208–76, 1852.208–77, 1852.208–78, 1852.208–79, 1852.208–80, and 1852.208–83 are removed.

**1852.208–75 [Redesignated as 1852.241–70]**

42. Section 1852.208–75 is redesignated as section 1852.241–70 and the introductory text is revised to read as follow:

**1852.241–70 Renewal of Contract.**

As prescribed in 48 CFR 1841.501(b), insert the following clause:

* * * * *

## PART 1870—NASA SUPPLEMENTARY REGULATIONS

**1870.103 NASA acquisition of investigations.**

43. In Appendix C to Appendix I of section 1870.103, Section II, paragraph A.3.a., ''Office of Policy Coordination and International Relations, Code IRD'' is revised to read ''Office of External Relations, Code IR'' and in paragraph A.3.d., ''Code IRD'' is revised to read ''Code IR'' and ''Office of Policy Coordination and International Relations'' is revised to read ''Office of External Relations''.

[FR Doc. 95–7612 Filed 3–28–95; 8:45 am]

BILLING CODE 7510–01–M

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## 48 CFR Parts 1815, 1837 and 1852

**RIN 2700–AB40**

## Revision to NASA FAR Supplement; Uncompensated Overtime

**AGENCY:** Office of Procurement, Analysis Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Agency's policy regarding the acceptability of uncompensated overtime (UCOT) in acquisition proposals. It establishes that UCOT provided by employees who are exempt from the Fair Labor Standards Act is neither encouraged nor discouraged, but that labor rates must be adjusted to account for any UCOT proposed. Further, any UCOT proposed must be supported by company policy, timekeeping and accounting systems, and the historical basis. The proposal evaluation will include a technical and cost risk assessment. A sample list of criteria to be considered during evaluation is included.

This final rule includes a solicitation provision for use in procurements estimated to exceed $500,000. Its use is optional in procurements between $100,000 and $500,000. The solicitation provision sets forth the agency policy and specifies the type of information needed to support any proposed UCOT.

This coverage was generated in response to industry and internal NASA requests for a uniform UCOT policy within the Agency. The coverage will promote consistent treatment of UCOT proposals, without constraining contractors' prerogatives in deciding whether to propose UCOT.

**EFFECTIVE DATE:** April 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. William T. Childs, Telephone: (202) 358–0454.

**SUPPLEMENTARY INFORMATION:**

### Background

NASA published a proposed rule in 59 FR 9951, March 2, 1994, essentially the same as that being promulgated here. Based on a review of public comments on the proposed rule, only minor changes were made. Fourteen comments were received from eight sources:

Two commenters recommended expansion of the applicability of the proposed rule, by deletion of the phrase ''in key technical positions'' in the first sentence of 48 CFR 1815.608–72. CONCUR—this change was accepted.

Three commenters recommended that the clause at 48 CFR 1852.237–72 include the policy statement that UCOT is neither encouraged nor discouraged. A fourth commenter expressed a similar concern. CONCUR—a preamble paragraph was added to address this in the clause, based on the policy in 48 CFR 1837.102(b).

Five commenters recommended a policy reversal, so as to either prohibit bidding of UCOT or nullify any pricing advantage. NONCONCUR—it is not our intention to restrict offerors' options in developing their proposals.

The remaining comments addressed minor clarifications or editorial changes. Some editorial changes were made to better organize the coverage and correct typographical errors.

In addition, a new paragraph (b) is added in 48 CFR 1815.608–72, containing a list of sample criteria for NASA personnel to consider in evaluating UCOT in proposals.

### Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, whether in whole or in part, directly by NASA.

### Regulatory Flexibility Act

NASA certifies that this Final Rule will not 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.).

### Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements in this rule and assigned control number 2700–0080.

### List of Subjects in 48 CFR Parts 1815, 1837 and 1852

Government procurement.

**Thomas S. Luedtke,**

*Deputy Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1815, 1837 and 1852 are amended as follows:

## PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 1815, 1837 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

2. Section 1815.608–72 is added to read as follows:

#### 1815.608–72 Uncompensated overtime.

(a) The contracting officer shall conduct a risk assessment of any proposal received for technical and professional services that includes unrealistically low labor rates, or uses a high level of uncompensated overtime (as defined in the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime). Such practices on the part of the contractor may jeopardize its ability to successfully perform contract requirements due, for example, to its inability to hire or retain qualified personnel. Such a risk assessment shall be performed as part of the technical evaluation and considered in proposal evaluation (see 48 CFR (FAR) 22.11 and 48 CFR 1837.102(b)).

(b) The risk assessment should consider factors such as—

(1) The number of hours that current employees have been accustomed to working, and the normal number of work hours for the local industry;

(2) The turnover rates for the firm and for the industry in the firm's geographical area;

(3) Whether employees involved in uncompensated overtime share directly in the firm's profits; e.g., through employee-ownership or a profit-sharing plan;

(4) Whether the contract period of performance is short, or whether uncompensated overtime will be used for only a relatively short period of time;

(5) Whether the firm uses approximately the same level of uncompensated overtime in its non-government business;

(6) Any potential for decline in quality or safety both during performance and in any deliverable produced; and

(7) The ability of the contractor to respond to an emergency requiring additional effort.

## PART 1837—SERVICE CONTRACTING

3. Section 1837.102 is added to read as follows:

#### 1837.102 Policy.

(a) To the maximum extent practicable, it is the policy of NASA to acquire services on the basis of the task to be performed rather than on a labor-hour basis.

(b) The use of uncompensated overtime (as defined in the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime) is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) 22.11). The provision at 48 CFR 1852.237–72 requires offerors to identify uncompensated overtime hours and the effective hourly rate for all Fair Labor Standards Act-exempt personnel

included in their proposals and subcontractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct (see 48 CFR 1815.608–72).

4. Section 1837.110 is revised to read as follows:

**1837.110 Solicitation provisions and contract clauses.**

(a) The contracting officer shall obtain the Associate Administrator for Procurement's (Code HC) approval before using in a solicitation, contract, or negotiated contract modification for additional work any installation-developed clause involving pension portability.

(b) The following provision applies to procurements under which professional and technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed.

(1) If the resulting contract is expected to exceed $500,000, the contracting officer shall insert in the solicitation the provision at 48 CFR 1852.237–72, Identification of Uncompensated Overtime.

(2) If the resulting contract is expected to exceed $100,000 but not exceed $500,000, the contracting officer may insert in the solicitation the provisions at 48 CFR 1852.237–72, Identification of Uncompensated Overtime.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 1852.237–72 is added to read as follows:

**1852.237–72 Identification of Uncompensated Overtime.**

As prescribed in 48 CFR 1827.110(b), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME

(APRIL 1995)

The use of uncompensated overtime is neither encouraged nor discouraged. When the proposed uncompensated overtime is consistent with an offeror's written policies and practices, NASA will consider it in proposal evaluation, including the evaluation of cost and of professional compensation (see 48 CFR (FAR) subpart 22.11).

(a) *Definitions.* As used in this provision:

*Uncompensated overtime* means the hours worked in excess of an average of 40 hours per week, by direct charge employees who are exempt from the Fair Labor Standards Act (FLSA) without additional compensation. Compensated personal absences, such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

*Effective hourly rate* is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at $20.00 per hour would be converted to an effective hourly rate of $17.78 per hour [($20.00×40) divided by 45=$17.78.]

(b) For any hours proposed against which an effective hourly rate is applied, the Offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, at the same level of detail as compensated hours, and the effective hourly rate, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct. The proposal shall include the rationale and methodology used to estimate the proposed amount of uncompensated overtime.

(c) The Offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a technical and cost risk assessment and evaluated for award in accordance with that assessment.

(e) The Offeror shall include with its proposal a copy of its policy addressing uncompensated overtime, a description of the timekeeping and accounting systems used to record all hours worked by FLSA-exempt employees, and the historical basis for the uncompensated overtime hours proposed.

(End of provision)

[FR Doc. 95–7734 Filed 3–28–95; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF JUSTICE

## 48 CFR Part 2801

**[Justice Acquisition Circular 95–1]**

## Amendment to the Justice Acquisition Regulations (JAR) Regarding Career Development, Contracting Authority, and Responsibilities

**AGENCY:** Office of the Procurement Executive, Justice Management Division, Justice.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the JAR by revising policies and procedures for redelegation of authority for contractual actions of goods and services; revising regulations to set forth the Department of Justice system for selection, appointment, and termination of appointment of contracting officers; and incorporating the agency's policies and procedures regarding the Procurement Career Management Program.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Janis Sposato, Procurement Executive, Justice Management Division (202) 514–3103.

**SUPPLEMENTARY INFORMATION:** The determination is hereby made that this amendment must be issued as a final rule. This amendment was not published for public comment because it does not have an effect beyond the internal operating procedures of the agency. The Director, Office of Management and Budget, by memorandum dated December 14, 1984, exempted agency procurement regulations from review under Executive Order 12291, except for selected areas. The exception applies to this rule. The Department of Justice certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601–612) because the amendment sets forth, wholly, internal departmental procedures. No additional time or cost burden will be placed on contractors by the promulgation of this regulation.

**List of Subjects in 48 CFR Part 2801**

Government procurement.

Dated: March 21, 1995.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

## PART 2801—DEPARTMENT OF JUSTICE ACQUISITION REGULATION SYSTEM

1. The authority citation for 48 CFR Part 2801 continues to read as follows:

**Authority:** 28 U.S.C. 510; 40 U.S.C. 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

2. The heading of subpart 2801.6 is revised to read as follows:

## Subpart 2801.6—Career Development, Contracting Authority, and Responsibilities

3. Section 2801.601 is amended by revising paragraph (d) to read as follows:

**2801.601 General.**

* * * * *

(d) The redelegation of contracting authority directly to specific persons without regard for intermediate organizational levels only establishes authority to represent the Government in its commercial business dealings. It is not intended to affect the organizational

relationship between the contracting officers and higher administrative and supervisory levels in the performance of their duties.

* * * * *

4. Section 2801.603 is revised to read as follows:

**2801.603 Selection, appointment and termination of appointment.**

**2801.603–2 Selection.**

Selection of contracting officers shall be in accordance with criteria and procedures established by each Bureau Procurement Chief in his or her component.

5. Section 2801.670 is added to read as follows:

**2801.670 Department of Justice Procurement Career Management Program.**

(a) Each Bureau Procurement Chief shall develop a procurement career management program for contracting personnel in his or her component.

(b) The program shall cover all contracting personnel with less than seven year experience in the categories described below:

(1) Occupational series 1102;

(2) Contracting officers with contracting authority above the simplified acquisition threshold;

(3) Occupational series 1105, other individuals performing purchasing duties and individuals with contracting authority at or under the simplified acquisition threshold.

(c)(1) The program shall include:

(i) An individual assessment by a supervisor of each covered employee's state of competence to perform the full range of potential duties of his or his job; and

(ii) An individual development plan to schedule classroom, on-the-job training, or other training to develop the employee's skill level to an appropriate level in each area of competence necessary to perform his or her job.

(2) Individual assessments and development plans should be designed to fit the needs of the component, but they should build upon the units of competence and instruction prepared by the Federal Acquisition Institute wherever feasible. Individual development plans should attempt to bring the employee to an appropriate level of skill in all necessary competencies by the time the employee has obtained seven years of experience in the field of procurement. In general, a proficiency skill level of 3, as defined in Attachment 1 to OFPP Policy Letter 92–3, shall be attained for any contracting duty that is actually required to be performed on the job.

(3) Employees who perform only purchasing duties, regardless of occupational series, shall be required to obtain the requisite level of skill only in competencies involving small purchases. If the employee's duties are expanded to include contracting duties, then skill in procurement competencies must be assessed and developed.

(4) Individual assessments of covered employee skills shall be completed by June 27, 1995, or within 90 days of the employee's entry on duty.

[FR Doc. 95–7677 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–01–M

# Proposed Rules

**Federal Register**
Vol. 60, No. 60
Wednesday, March 29, 1995

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Parts 301 and 319

**[Docket No. 94–069–1]**

### Unshu Oranges From Korea

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations governing the importation and interstate movement of citrus fruit to allow, under certain conditions, Unshu oranges grown in citrus-canker free zones on Cheju Island, Republic of Korea, to be imported into the United States and moved interstate. This action would relieve restrictions on the importation into and distribution within the United States of Unshu oranges from Cheju Island, Republic of Korea, without presenting a significant risk of spreading citrus canker.

**DATES:** Consideration will be given only to comments received on or before April 28, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 94–069–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228. Please state that your comments refer to Docket No. 94–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Peter Grosser or Mr. Frank Cooper, Senior Operations Officers, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Port Operations, 4700 River Road Unit 139, Riverdale, MD 20737–1228, (301) 734–6799.

**SUPPLEMENTARY INFORMATION:**

#### Background

Citrus canker is a disease which affects citrus, and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Korea infects the twigs, leaves, and fruit of a wide spectrum of *Citrus* species.

Currently, the regulations in 7 CFR 319.28 (the regulations) prohibit the importation of citrus from Eastern and Southeastern Asia, Japan, Brazil, Paraguay, and other designated areas, except for Unshu oranges (*Citrus reticulata* Blanco var. unshu, also known as Satsuma) grown in citrus canker-free areas in Japan. After meeting certain growing, packing, and inspection requirements, Japanese Unshu oranges may be imported into any area of the United States except American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States. Also, under the regulations in 7 CFR 301.83, Unshu oranges grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States; all areas of the United States, except for American Samoa, Arizona, California, Florida, Louisiana, the Northern Mariana Islands, Puerto Rico, Texas, and the Virgin Islands of the United States, are quarantined.

We are proposing to amend the regulations to allow the importation and interstate movement, under identical restrictions, of Unshu oranges grown in citrus canker-free areas on Cheju Island, Republic of Korea. To qualify for importation into the United States, the oranges would have to meet the following requirements:

(1) They must be grown and packed in isolated, canker-free export areas where only Unshu orange trees are grown. These areas must be surrounded by a disease-free buffer zone in which only certain varieties of citrus may be grown;

(2) Korean and U.S. plant protection officials must jointly inspect the canker free export areas and buffer zones, and must jointly inspect Unshu oranges in the groves prior to and during harvest and in the packinghouses during packing operations;

(3) Before packing, the Unshu oranges must be given a USDA-prescribed surface sterilization with a bleach and water solution;

(4) On boxes in which Unshu oranges are packed and on the tissue paper wrapping of individual Unshu oranges there must be stamped or printed a statement specifying the States into which the Unshu oranges may be imported and from which they are prohibited removal under a Federal plant quarantine;

(5) The Unshu oranges must also be accompanied by a certificate from the Korean Plant Protection Service certifying that the fruit is apparently free of citrus canker.

Also, we are proposing to amend the regulations in § 301.83 to prohibit the movement of Cheju Island Unshu oranges from any quarantined area into or through any nonquarantined area of the United States. The quarantined areas in the United States for Unshu oranges from Cheju Island would be the same as those established for Unshu oranges from Japan.

These safeguards would be adequate to ensure that the Unshu oranges from Cheju Island, Republic of Korea, would not disseminate citrus canker if permitted into the United States.

#### Miscellaneous

Currently, under § 319.28 (b)(1) and (b)(2) of the regulations, the Animal and Plant Health Inspection Service (APHIS) requires that qualified Japanese and U.S. plant pathologists jointly inspect the canker-free export areas, buffer zones, and Unshu oranges. APHIS believes that these joint inspections could be carried out effectively by plant protection officers from APHIS and the country of origin of the Unshu oranges, either Japan or the Republic of Korea, rather than by plant pathologists. Plant protection officers given this duty would be trained to examine trees and fruit for the presence of citrus canker and other diseases. Therefore, we are proposing to allow plant protection officers from APHIS and Japan or the Republic of Korea to carry out these joint inspections.

Also, under § 319.28(a)(1) of the regulations, APHIS prohibits the importation of citrus fruit from eastern, southeastern Asia, and other areas.

Several countries, including India, Burma, Ceylon, Thailand, Indochina, China, and Japan are mentioned. APHIS considers the Republic of Korea to be part of eastern Asia and prohibits the importation of Korean citrus, even though Korea is not specifically listed under § 319.28(a)(1). We are proposing to add the Republic of Korea to this list in order to clarify the prohibition on the importation of Korean citrus.

Finally, under § 319.28(b)(7) of the regulations, Unshu oranges grown in Japan are subject to a final examination at the port of arrival in the United States by APHIS inspectors to determine if they are infected with citrus canker. This requirement is redundant, since § 319.56–6 of the Fruits and Vegetables regulations contains a similar provision that applies to all imported produce. We are proposing, therefore, to remove § 319.28(b)(7) from the regulations.

**Executive Order 12866 and Regulatory Flexibility Act**

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

In accordance with 5 U.S.C. 603, we have performed an Initial Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. However, we do not currently have all the data necessary for a comprehensive analysis of the effects of this rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule.

This proposed rule would allow Unshu oranges grown on Cheju Island, Republic of Korea, to be imported into and through 45 States after meeting certain requirements.

Unshu oranges are imported for a small market in the United States and sell for two to three times the price of the domestically grown Satsuma tangerines, a citrus fruit similar to the Unshu orange. Imported Unshu oranges are available for only a short period of time each year, from early November into mid-January.

In the 1992–93 growing season, domestic producers grew approximately 362 million pounds of tangerines in Arizona, California and Florida. We estimate annual domestic production of Satsuma tangerines to be about 1.9 to 2.4 million pounds, less than one one-hundredth of one percent of total tangerine production.

We anticipate that following the promulgation of this rule, the Republic of Korea initially could export about 1.1 million pounds of Unshu oranges to the United States and increase this amount to around 3.3 to 4.4 million pounds within a few years. While 4.4 million pounds of imported Korean Unshu oranges would amount to less than one percent of the total domestic tangerine production, it would constitute twice the annual domestic production of satsuma tangerines. Again, however, these Korean Unshu oranges could cost up to three times as much as domestically produced Satsuma tangerines.

**Executive Order 12778**

This proposed rule would allow Unshu oranges to be imported into the United States from Cheju Island, Republic of Korea. If this proposed rule is adopted, State and local laws and regulations regarding Unshu oranges imported under this rule would be preempted while the fruit is in foreign commerce. Fresh Unshu oranges are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Docket No. 94–069–1, Animal and Plant Health Inspection Service, Policy and Program Development, Regulatory Analysis and Development, 4700 River Road Unit 118, Riverdale, MD 20737–1228, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

**List of Subjects**

*7 CFR Part 301*

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

*7 CFR Part 319*

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR parts 301 and 319 would be amended as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

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

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

**§ 301.83 [Amended]**

2. In § 301.83, paragraph (a) would be amended by adding the phrase ''or on Cheju Island, Republic of Korea,'' immediately following ''Japan''.

## PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450; 21 U.S.C. 136 and 136a; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 319.28 [Amended]**

4. Section 319.28 would be amended as follows:

a. Paragraph (a)(1) would be amended by adding the phrase ''the Republic of Korea,'' immediately following the phrase ''Japan and adjacent islands,''.

b. Paragraph (b) introductory text would be amended by adding the phrase ''or on Cheju Island, Republic of Korea,'' immediately following ''Japan''.

c. In paragraph (b)(1), the first sentence would be amended by removing the phrase ''Japanese Plant Protection Service'' and adding the phrase ''plant protection service of the country of origin'' in its place; and in the third and sixth sentences, the word ''pathologists'' would be removed and the phrase ''protection officers'' would be added in its place and the word ''Japan'' would be removed and the phrase ''the country of origin'' would be added in its place.

d. Paragraph (b)(2) would be amended by removing the word ''pathologists'' and adding the phrase ''protection officers'' in its place and by removing

the word ''Japan'' and adding the phrase ''the country of origin'' in its place.

e. Paragraph (b)(4)(ii) would be amended by removing the phrase ''Japanese Plant Protection Service'' and adding the phrase ''plant protection service of the country of origin'' in its place.

f. Paragraph (b)(7) would be removed.

g. In paragraph (f), the word ''Japan'' would be removed and the phrase ''the country of origin of the Unshu oranges'' would be added in its place.

Done in Washington, DC, this 22nd day of March 1995.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 95–7600 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–34–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Parts 303 and 359

**RIN 3064–AB11**

### Regulation of Golden Parachutes and Other Benefits Which May Be Subject to Misuse

**AGENCY:** Federal Deposit Insurance Corporation (FDIC or Corporation).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The FDIC is proposing a rule limiting golden parachute and indemnification payments to institution-affiliated parties by insured depository institutions and depository institution holding companies. The purpose of this rule is to prevent the improper disposition of institution assets and to protect the financial soundness of insured depository institutions, depository institution holding companies, and the federal deposit insurance funds.

**DATES:** Comments must be received by May 30, 1995.

**ADDRESSES:** Send comments to Robert E. Feldman, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. [FAX number: (202) 898–3838.]

**FOR FURTHER INFORMATION CONTACT:** Robert F. Miailovich, Associate Director, Division of Supervision, (202) 898–6918, 550 17th Street, N.W., Washington, D.C.; Michael D. Jenkins, Examination Specialist, Division of Supervision, (202) 898–6896, 1776 F Street, N.W., Washington, D.C. 20429; Jeffrey M. Kopchik, Counsel, Legal Division, (202) 898–3872; Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

**SUPPLEMENTARY INFORMATION:**

#### Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

#### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant impact on a substantial number of small entities.

#### Background

Section 2523 of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 [1] (Fraud Act) amended the Federal Deposit Insurance Act (FDI Act) by adding a new section 18(k). Pub. L. No. 101–647, § 2523 (1990). This section 18(k)(1) provides that ''[t]he Corporation may prohibit or limit, by regulation or order, any golden parachute payment or indemnification payment''. 12 U.S.C. 1828(k)(1). The terms ''golden parachute payment'' and ''indemnification payment'' are defined in sections 18(k)(4) and (5)(A) of the FDI Act, respectively. *Id*. at 1828(k) (4) and (5)(A). The statute's proscriptions are applicable to insured depository institutions and depository institution holding companies. *Id*.

On October 7, 1991, the FDIC published a notice of proposed rulemaking entitled ''Regulation of Golden Parachutes and Other Benefits Which Are Subject to Misuse'' to implement this provision of the Fraud Act. 56 FR 50529 (1991) (to be codified at 12 CFR Part 359). By the end of the sixty day comment period, the FDIC received 186 letters commenting on the proposed regulation. The majority of these comment letters suggested that the FDIC revise the proposed rule in order to strike a more equitable balance between the protection of the deposit insurance funds and the needs of depository institutions and depository institution holding companies to attract and retain qualified directors and management. Many of the comment letters also suggested certain technical amendments to the proposed rule to make it reflect more accurately the FDIC's intentions as stated in the preamble. A few comment letters requested that no regulation be promulgated. These letters expressed the opinion that abuses should be dealt with on a case-by-case basis through the use of enforcement proceedings. It should be noted that the FDIC was gratified to observe the exceptionally high level of preparation and thought which went into many of the comment letters.

Due to the significant amount of time which has passed since the publication of the first proposed rule (the First Proposal), the FDIC has decided to publish a second proposal for public comment (the Second Proposal). The Second Proposal incorporates many of the suggestions which were made by the commenters to the First Proposal.

#### Summary of the Second Proposal

The golden parachute portion of the Second Proposal affects insured depository institutions seeking to make the golden parachute payments [2] only if the institution is in a ''troubled'' condition.[3] The proposed regulation would apply to affiliated depository institution holding companies either if the holding company itself is troubled or if it seeks to make a golden parachute payment to an institution-affiliated party (IAP) of a troubled subsidiary insured depository institution. The indemnification portion of the Second Proposal is applicable to all insured depository institutions and their holding companies regardless of their financial condition.

Generally, the Second Proposal prohibits institutions which are insolvent, in conservatorship or receivership, rated ''4'' or ''5'', in a troubled condition as defined in the regulations of the appropriate federal banking agency, or which are subject to a proceeding to terminate deposit insurance from making any payment to an institution-affiliated party which is contingent on the termination of that person's affiliation with the institution, except payments of death or disability benefits, payments pursuant to qualified retirement plans and employee welfare

[1] The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 is title XXV of the Crime Control Act of 1990, S. 3266, which was passed by Congress on October 27, 1990 and signed by the President on November 29, 1990.

[2] The terms ''golden parachute payment'' and ''golden parachute'' are used interchangeably throughout this discussion.

[3] The use of the term ''troubled'' in this preamble shall refer to an institution or holding company which meets any of the criteria set forth in §§ 359.1(f)(1)(ii) (A) through (E) of the Second Proposal.

benefit plans and two other exceptions which are described in more detail below. The Second Proposal also prohibits institutions from paying or reimbursing an institution-affiliated party's legal and other professional expenses incurred in administrative or civil proceedings instituted by any federal banking agency unless certain criteria are satisfied. Under no circumstances does the Second Proposal allow the reimbursement or payment of fines or penalties assessed against an institution-affiliated party as a result of such a proceeding.

The Second Proposal recognizes several ''exceptions'' to the prohibition against golden parachute payments.[4] First, § 359.4(b) of the Second Proposal allows an insured depository institution or its depository institution holding company to make a golden parachute payment to an institution-affiliated party who is hired by an institution or holding company with the written consent of the appropriate federal banking agency at a time when the institution or holding company satisfies or is expected to satisfy any of the criteria set forth in § 359.1(f)(1)(ii) of the Second Proposal,[5] and whose golden parachute agreement is approved by the FDIC in its corporate capacity as the regulator of operating state nonmember banks. These criteria are taken from section 18(k) of the FDI Act. (12 U.S.C 1828(k)(4)(A)(ii)).

Second, § 359.4(c) of the Second Proposal permits a golden parachute payment, not to exceed twelve months salary, to an institution-affiliated party in the event of an unassisted change in control, with the prior consent of the appropriate federal banking agency.

The third ''exception'' is contained in § 359.1(f) of the Second Proposal, which defines a ''golden parachute payment''. The FDIC recognizes that one important tool in restoring an institution to financial health may be institutional downsizing through personnel reductions in force. In such situations, institutions may choose to employ an existing severance pay plan or adopt a new plan to assist employees whose employment is terminated. In addition, many corporations (in various industries) maintain severance pay plans which pay benefits to employees who lose their jobs through no fault of their own, for reasons such as an overall reduction in force. Thus, § 359.1(f)(2)(v) of the Second Proposal provides that the term ''golden parachute payment'' does not include any payment made pursuant to a nondiscriminatory severance plan or arrangement which provides for the payment of severance benefits to all eligible employees upon involuntary termination for other than cause, or early retirement, in conjunction with a reduction in force. However, the Second Proposal limits the maximum severance benefit that any employee may receive pursuant to such a plan to twelve months' base salary, although an institution may request consent to make larger payments. In the event that any senior executive officer, as defined in § 303.14(a)(3) of these regulations, is eligible for such severance benefits, the depository institution or holding company must provide 30 days prior written notice to its primary regulator and the FDIC before making such a payment to those individuals.

The fourth ''exception'' to the golden parachute payment prohibition is contained in § 359.1(d) of the Second Proposal which defines ''*bona fide* deferred compensation plan or arrangement''. Section 18(k) of the FDI Act explicitly authorizes the FDIC to define, by regulation or order, permissible *bona fide* deferred compensation plan[s] or arrangement[s]. (12 U.S.C. 1828(k)(4)(C)(ii)).

The definition of ''golden parachute payment'' contained in § 359.1(f) of the Second Proposal also sets forth several other straightforward exceptions which do not require further discussion here.

Section 18(k)(2) of the FDI Act provides that the FDIC ''shall prescribe, by regulation, the factors to be considered by the Corporation in taking any action pursuant to paragraph (1) [its authority to prohibit or limit golden parachute payments and indemnification payments]''. The section also sets forth a number of illustrative factors that should be considered. The Corporation has carefully considered these factors in arriving at the conclusion that golden parachute payments generally should be prohibited, except in the narrow circumstances delineated in § 359.4 of the Second Proposal. Section 359.4 of the Second Proposal also sets forth a procedure to allow an institution or institution-affiliated party which desires to make a payment or enter into an agreement which it determines should not be prohibited, but which is not clearly covered by any of the express ''exceptions'' to the prohibition, to solicit appropriate regulatory approvals. In so doing, the institution or institution-affiliated party will be required to address certain of the factors enumerated in section 18(k) of the FDI Act, and the appropriate federal banking agency and the Corporation may consider the remaining factors and any other circumstances which bear on the issue of whether the proposed payment would be contrary to the intent of the prohibition.

Section 18(k) of the FDI Act also authorizes the FDIC to prohibit or limit indemnification payments. (12 U.S.C. 1828(k)(5).) A ''prohibited indemnification payment'' is defined in the Second Proposal as payment by an insured depository institution or its depository institution holding company for the benefit of an IAP in order to pay or reimburse such person for any liability or legal expense sustained with regard to an administrative or civil enforcement action which results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the conduct of the affairs of an insured depository institution or required to cease and desist from or take any affirmative action described in section 8(b) of the FDI Act. The legislative history of the Fraud Act, which added section 18(k) to the FDI Act, makes it clear that this section is intended (i) to preserve the deterrent effects of administrative enforcement or civil actions by insuring that institution-affiliated parties who are found to have violated the law, engaged in unsafe or unsound banking practices or breached any fiduciary duty to the institution, pay any civil money penalties and associated legal expenses out of their own pockets without reimbursement from the institution or its holding company and (ii) to safeguard the assets of financial institutions by prohibiting the expenditure of funds to defend, pay penalties imposed on or reimburse institution-affiliated parties who have been found to have violated the law. 136 Cong. Rec. E3687 (daily ed. November 2, 1990) (statement of Rep. Schumer).

The FDIC is of the opinion that it would be inconsistent with the intent of the Fraud Act categorically to prohibit insured depository institutions and holding companies from advancing funds to pay or reimburse IAP's for reasonable legal or other professional expenses incurred in defending against an administrative or civil action brought by a federal banking agency prior to the entry of a final order. Therefore, § 359.5 of the Second Proposal sets forth the circumstances under which such indemnification payments may be

[4] More precisely, only two of these are actual exceptions to the prohibition in that they permit a payment or agreement which is covered by the statutory language. The others are definitions of statutory terms which have been developed or refined by the Corporation.

[5] These criteria are that the institution or holding company is insolvent, in conservatorship of receivership, troubled, rated ''4'' or ''5'', or subject to a proceeding to terminate deposit insurance.

made. The FDIC is of the opinion that five criteria must be satisfied in order to permit an institution to make or agree to make any indemnification payment to or for the benefit of any IAP prior to the entry of a final order in the IAP's favor. However, an institution or its holding company may purchase commercial insurance policies or fidelity bonds, at a reasonable cost, which may pay the cost of defending an administrative proceeding or civil action. Such insurance cannot pay any penalty or judgement. However, it may pay restitution to the insured depository institution, depository institution holding company or the receiver.

**Issues Raised By Commentators—Golden Parachutes**

The FDIC has carefully reviewed and analyzed the substantial number of comment letters which it received in response to the First Proposal. With regard to the golden parachute portion of the First Proposal, the most significant issues raised by the comment letters are discussed below.

*1. Bona Fide Deferred Compensation Plans*

A substantial number of commenters raised the issue of whether the requirement that *bona fide* deferred compensation plans be ''funded'' in order to be excluded from the regulation's proscriptions is appropriate. Section 359.1(d)(2) of the First Proposal established a requirement that a nonqualified [6] deferred compensation plan be ''funded'' in order to be considered a ''*bona fide* deferred compensation plan or arrangement'' which is excluded from the definition of golden parachute payment. The term funded was defined as meaning that ''specific assets are segregated or otherwise set aside so that such assets are not available to the institution or holding company for any purpose other than distribution to the participating employee(s) and are not available to satisfy claims of the institution's or holding company's creditors''. First Proposal § 359.1(d)(2). The vast majority of comment letters which the FDIC received raised the issue of the appropriate definition of *bona fide* deferred compensation plan and virtually every letter which raised this issue disagreed with the Corporation's imposition of the funding requirement. The predominant argument against such a requirement is that when Congress drafted section 18(k)(4)(C)(ii) of the FDI Act to exclude *bona fide* deferred compensation plans from the definition of golden parachute, it was aware and approved of the established industry practice of utilizing unfunded, nonqualified deferred compensation plans (commonly referred to as elective, excess or supplemental plans) to supplement the traditional tax qualified defined benefit or defined contribution retirement plan. Many of the comment letters also pointed out that the Internal Revenue Code (26 U.S.C. 1 *et seq.*) (the ''Code'') recognizes these types of nonqualified deferred compensation plans and urged the FDIC to look to the Code as being dispositive. Almost all of the relevant comment letters expressed grave concerns that the FDIC's imposition of the funding requirement would upset established deferred compensation plans and prompt depository institutions and holding companies to incur significant unwanted expenses by terminating these plans and making cash payments to the beneficiaries. Nonetheless, Congress chose not to define the term ''*bona fide* deferred compensation plan'', but explicitly left that task to the FDIC.

First, it should be pointed out that the FDIC is not bound by the provisions of the Internal Revenue Code, or any other federal statute, in defining the term *bona fide* deferred compensation plan or arrangement. While the Code's explanation and treatment of such plans may be instructive, it is not binding on the Corporation in the context of this rulemaking. Similarly, the fact that the industry has utilized unfunded, non-qualified plans for a period of time and would be inconvenienced by the implementation of the proposed regulation is insufficient to compel the change that the majority of comments advocate. The FDIC's responsibility is to ascertain the proper meaning of the term *bona fide* deferred compensation plan, while ensuring that such definition does not permit depository institutions, holding companies or institution-affiliated parties to circumvent the intent of the statute by exploiting an imprecisely drafted definition. On the other hand, if the Corporation can accomplish its purposes in a manner that is less disruptive but just as effective as the scheme set forth in the First Proposal, such an alternative bears close scrutiny.

The FDIC has been persuaded by the many comments it received with regard to the definition of *bona fide* deferred compensation plan that the funding requirement which was contained in § 359.1(d)(2) of the First Proposal is not necessary and should be deleted. Thus, the definition of *bona fide* deferred compensation plan or arrangement, which appears in § 359.1(d) of the Second Proposal, does not contain such a requirement. This provision of the Second Proposal permits unfunded, nonqualified deferred compensation plans provided the institution or holding company utilizes either a rabbi or a secular trust (which are properly accounted for) or the benefits or payments are expensed as an accrued liability according to generally accepted accounting principles (GAAP). Second Proposal § 359.1(d). It is the FDIC's judgment that these requirements will permit depository institutions and holding companies to utilize deferred compensation plans for legitimate purposes, while ensuring that such plans can not be used as a vehicle to make what would otherwise be considered a prohibited golden parachute payment.

*2. Severance Pay Plans*

All the comment letters which raised the issue expressed support for the FDIC's decision to except traditional severance pay plans which cover reductions in force from the definition of golden parachute payment. However, a substantial percentage of these letters urged the Corporation to increase the allowable amount of severance pay from six to twelve months salary and to expand the exception to include payments pursuant to voluntary resignations or early retirements which occur in conjunction with a reduction in force instituted by a depository institution or holding company. After careful consideration, the Corporation has elected to increase the permissible amount of severance pay from six to twelve months' salary. In addition, the regulation has been amended to permit institutions to request consent to pay greater severance benefits. Second Proposal § 359.1(f)(2)(v). The FDIC requests public comment on this new alternative. The inclusion in the exception of voluntary resignations and early retirements in conjunction with a reduction in force provides depository institutions and holding companies with more flexibility in achieving an optimum workforce size and cost savings. Second Proposal § 359.1(f)(2)(v). The FDIC has also decided to include a definition of the term ''nondiscriminatory'' in § 359.1(j) of the Second Proposal in an effort to make it clear how this term should be applied in the context of this regulation. The Corporation emphasizes that this exception is only applicable to institution-affiliated parties who are

[6] The term ''nonqualified'' refers to a benefit plan which is not qualified (or is not intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401).

terminated, resign or retire due to a reduction in force and receive severance benefits pursuant to a existing nondiscriminatory severance pay plan.

*3. White Knight Exception*

Section 359.4 of the First Proposal sets forth what is commonly referred to as the ''white knight'' exception to the golden parachute prohibition. This provision permits a troubled depository institution or holding company to hire an individual and agree to pay him/her a golden parachute payment upon termination of employment, provided that the amount and terms of the golden parachute payment receive the prior written consent of the appropriate federal banking agency and the FDIC. As we stated in the preamble to the First Proposal:

> The purpose of this exception is to permit a troubled institution or holding company to attempt to reverse its slide toward economic failure by attracting competent, new management which enjoys the confidence of that institution's primary federal regulator and the FDIC. . . . [T]he FDIC is aware that individuals who possess the experience and expertise which qualify them for such a position are highly sought after business persons who, in most circumstances, already have established successful careers with other financial institutions. In order to induce such an individual to leave an established, stable career for a job in a troubled institution which may not survive regardless of that individual's efforts, it is generally necessary to agree to pay that individual some sort of severance payment in the event that the efforts of the individual for the institution are not successful. It is the FDIC's view that . . . such agreements reflect good business judgment, recognize the realities of the marketplace and may benefit both the institution and the deposit insurance funds.

(56 FR 50531, October 7, 1991). While every comment letter which addressed this exception supported it, a significant percentage of those letters urged the FDIC to broaden the exception in certain respects. First, it was recommended that the Corporation revise § 359.4 of the First Proposal to automatically grandfather institution-affiliated parties who were hired to assist troubled depository institutions and holding companies prior to the effective date of the final regulation. The FDIC has carefully considered this suggestion and is of the opinion that such an across-the-board grandfathering would not be prudent. Section 359.4 is structured so that the appropriate federal banking agency and the FDIC have an opportunity to review the amount and terms of any proposed severance arrangement prior to it being entered into. To grandfather all such existing severance agreements would deny the appropriate federal banking agency and the FDIC the opportunity to conduct this review. However, institution-affiliated parties, insured depository institutions and holding companies are of course free to request review and approval of existing agreements for institution-affiliated parties who were hired at a time when the depository institution or holding company already met any of the criteria listed in § 359.1(f)(1)(ii) of the Second Proposal.

Second, a significant number of commentators also suggested that the white knight exception be broadened to encompass individuals who are hired ''in contemplation of'' the depository institution or holding company becoming troubled. These letters urged this revision as a way to allow depository institutions to address their problems sooner and, thus, more effectively. The FDIC concurs in this line of reasoning. It makes good sense that the value of this exception can be enhanced by not restricting its coverage to institutions which are already categorized as troubled. If existing management or a board of directors is of the reasoned opinion that the institution in question is sliding toward becoming troubled and that new management is needed to arrest that slide, then prudent business practice would suggest that it is better to hire such new management sooner rather than later. Therefore, the exception has been expanded to allow applicants to apply for an exemption prior to becoming troubled when they are of the opinion that they are approaching a troubled condition and new management is needed. Second Proposal § 359.4(b).

Third, several comment letters suggested that the FDIC broaden the § 359.4 exception of the First Proposal to include current officers and employees of a depository institution who are promoted to executive positions at a time when the institution is troubled. While the FDIC agrees that ''it is not axiomatic that competent new management can only be found outside of an institution'', the underlying reason for allowing what would otherwise be a prohibited golden parachute payment is not present in the case of a current employee who is promoted to an executive position. As we stated earlier, this type of severance payment will be approved in limited circumstances as a way to entice competent management to sever established ties with their current employer and take a calculated risk that they can assist in bringing a troubled institution back to financial health. This rationale does not apply to the case of a current employee of a troubled institution since he/she does not need to be enticed to give up an established, stable career with another employer.

The FDIC's experience since the publication of the First Proposal has made it clear that some confusion exists concerning the proper procedure to request and the effect of obtaining prior written consent for a white knight exception. Interested parties are referred to new § 359.6 of the Second Proposal, ''Filing Instructions''. In terms of effect, the FDIC would like to clarify that approval of a white knight exception does not improve the white knight's position in the event of the insolvency of the institution as the FDIC (in its corporate capacity) can neither bind a receiver nor affect the provability of receivership claims. In the event that the insured depository institution is placed into receivership or conservatorship, the FDIC (in its corporate capacity) would not be obligated to pay the promised severance benefit and the white knight would be accorded no preferential treatment on the basis of such prior approval.

*4. Permissible Golden Parachutes in Changes in Control*

Several comment letters noted that the First Proposal does not provide an exception to the prohibition against golden parachute payments in the case of a change in control where the depository institution to be acquired is troubled. These letters raised the arguments which were briefly mentioned in the preamble to the First Proposal (56 FR 50529, October 7, 1991) concerning the benefits of protecting executive officers of companies which are the subject of hostile takeovers so that their business decisions concerning what is best for their company are not influenced by the acquisition's ultimate effect on their employment. While the FDIC agrees that golden parachute payments can serve a useful purpose in such circumstances, expanding the exceptions permitted pursuant to § 359.4 of the First Proposal to include golden parachute payments made in the context of changes in control would open the door to the possibility of payments being made to institution-affiliated parties who are substantially responsible for the depository institution's troubled condition. After balancing the relative advantages and disadvantages of expanding § 359.4 to include this exception, the FDIC is of the opinion that the safety of the deposit insurance funds and the soundness of the banking system in general is best served by permitting limited golden parachute payments with prior regulatory approval in the context of

unassisted changes in control.[7] While this decision does not adopt completely the position advocated by the majority of comment letters, the FDIC is concerned that a more open-ended exception would have the unfortunate result of allowing institution-affiliated parties who are substantially responsible for the troubled condition of their depository institutions to receive golden parachute payments.

*5. Definition of Golden Parachute Payment*

A significant number of comment letters pointed out that a literal reading of the definition of golden parachute payment contained in § 359.1(g) of the First Proposal would include certain forms of retirement payments being made to former institution-affiliated parties who retired and began collecting such payments at a time when the depository institution or its holding company did not satisfy any of the circumstances delineated in §§ 359.1(g)(1)(ii) (A) through (E) of the First Proposal, but which institution or holding company subsequently became troubled. It was also brought to our attention that a literal reading of the definition seemed to provide that even when a troubled depository institution or its holding company ceased satisfying any of the criteria delineated in §§ 359.1(g)(1)(ii) (A) through (E) of the First Proposal, golden parachute payments to institution-affiliated parties who leave the institution subsequent to its return to financial health would continue to be prohibited. It is not the FDIC's intent that the regulation produce either of these results. Institution-affiliated parties who retire from an insured depository institution or holding company at a time when it is not troubled and begin collecting periodic retirement payments should not have to worry that the subsequent deterioration of the institution or holding company will jeopardize their continuing to receive such payments, at least as far as this regulation is concerned.[8] Similarly, if a depository institution or holding company recovers from its troubled condition, then it is no longer covered under the scope of the regulation with respect to its existing institution-affiliated parties, and what might have been considered prohibited golden parachute payments would no longer be unlawful and could be paid to an institution-affiliated party whose employment is terminated once the institution or holding company is no longer troubled.[9] It is our opinion that the revised definition of bona fide deferred compensation plan or arrangement contained in § 359.1(d) of the Second Proposal should alleviate these concerns since the revised definition recognizes and includes well-established forms of deferred compensation. However, the FDIC has also chosen to revise the definition of golden parachute payment, which is contained in § 359.1(f) of the Second Proposal, to make it clear that to be a golden parachute, an institution-affiliated party's employment by or affiliation with an insured depository institution or holding company must terminate at a time when the institution or holding company is troubled or in contemplation of it becoming troubled. Second Proposal § 359.1(f)(1)(iii). If an institution-affiliated party's employment is terminated at a time when the depository institution or holding company is troubled, the payment of prohibited golden parachute payments to that individual will continue to be prohibited even after the institution or holding company ceases to be troubled.

*6. Definition of Depository Institution Holding Company*

Section 359.1(f) of the First Proposal, the definition of ''depository institution holding company'', includes any bank holding company, savings and loan holding company and any direct or indirect subsidiary thereof, other than an insured depository institution. A number of comment letters raised the concern that the definition in the First Proposal is not consistent with the definition of depository institution holding company contained in section 3(w)(1) of the FDI Act. A number of comment letters also argued that the broader definition used in the First Proposal would improperly include non-financial services affiliates that are not involved with the business conducted by the insured depository institution within the purview of the regulation. Pursuant to the First Proposal, golden parachute payments by a non-financial services company to one of its executives would be restricted simply because that company was ultimately owned by a holding company which also owned an insured depository institution. After considering this point, the FDIC agrees that the definition of depository institution holding company in the Second Proposal should mirror the definition contained in section 3(w)(1) of the FDI Act. Second Proposal § 359.1(b).

*7. Scope of Rule*

Section 359.1(j) of the First Proposal contains the definition of institution-affiliated party. A number of comment letters raised the issue that the regulatory definition proposed by the FDIC goes beyond the statutory definition contained in section 3(u) of the FDI Act by including persons who have a certain relationship with a depository institution holding company. However, in carefully reviewing the language of section 18(k)(4)(A) of the FDI Act, the FDIC is of the opinion that Congress intended to include within the statute's scope individuals who are institution-affiliated parties of depository institution holding companies.

> The term ''golden parachute payment'' means any payment * * * by any insured depository institution or depository institution holding company for the benefit of any institution-affiliated party pursuant to an obligation of such institution or holding company that * * * is contingent on the termination of such party's affiliation with the institution or holding company * * * [Emphasis added].

12 U.S.C. 1828(k)(4)(A). This interpretation is consistent with section 8(b)(3) of the FDI Act which provides that the Act's enforcement provisions are equally applicable to bank holding companies. Our consultations with the Federal Reserve Board staff have established that the Federal Reserve Board's established position is that it has the authority to take enforcement action against institution-affiliated parties of bank holding companies pursuant to section 8(b)(3) of the FDI Act.

The FDIC is also of the opinion that to interpret section 18(k) to not apply to institution-affiliated parties of holding companies would subvert the statute's intent by leaving a significant gap in its coverage. Federal Reserve staff has advised the Corporation that some of the most abusive golden parachute payments which were made prior to the enactment of the statute and were known to Congress at the time involved IAPs of holding companies. Thus, the FDIC has decided not to revise the definition of IAP contained in the First Proposal, except for a minor technical change.

[7] Obviously, this analysis does not apply to situations where the Corporation is assisting in the acquisition of a troubled insured depository institution pursuant to section 13 of the FDI Act.

[8] Obviously, the financial deterioration of the institution or holding company may adversely affect the institution's or holding company's ability to make the payments regardless of the regulation.

[9] This payment could include benefits which continued to accrue during the tenure of the institution's or holding company's troubled condition.

*8. Limitation to Executive Officers and Directors*

Several comment letters suggested that the scope of the regulation should be limited to cover only executive officers and directors of insured depository institutions and depository institution holding companies, as opposed to institution-affiliated parties of institutions and holding companies. On the other hand, section 18(k)(4) of the FDI Act explicitly refers to ''institution-affiliated party''.

While potential golden parachute abuses could theoretically involve non-executive officers and non-directors, it has been the FDIC's experience that such instances are extremely rare. It is not the FDIC's intent to place unfair and inappropriate limits on payments to a bank or holding company's non-official or non-managerial staff. This is evidenced, for example, by the severance pay exception which is contained in § 359.1(f)(2)(v) of the Second Proposal. In the Corporation's view, it is very unlikely that a bank teller (or other non-executive/non-director) would come within the scope of this rule since bank tellers generally do not get paid golden parachutes. That being the case, and in view of the fact that the statute uses the term ''institution-affiliated party'', the FDIC has chosen not to explicitly exclude employees who are not senior executive officers or directors from the Second Proposal's scope. It should also be pointed out that any such employee who feels that he/she is being unfairly affected by the rule could apply for permission to receive a payment pursuant to § 359.4 of the Second Proposal.

*9. Golden Parachute Agreements Entered Into Prior to Effective Date of Final Regulation*

The First Proposal took the position that the regulation could limit or prohibit golden parachute and/or indemnification payments which are sought to be made pursuant to contracts and agreements which were entered into prior to the effective date of the final regulation, *i.e.,* as of the effective date of the statute. A number of comment letters briefly asserted that the regulation could not lawfully affect such agreements since to do so would be ''unconstitutional''. However, the vast majority of comment letters which raised this issue did not explain in any detail the basis for this alleged unconstitutionality.

The FDIC has examined this issue in greater depth and while we remain convinced that ample precedent exists to support the position which was taken in the First Proposal, no compelling need exists to apply the regulation in this fashion. However, the FDIC views the Second Proposal as putting institutions and IAPs on notice of the Corporation's views with regard to these types of agreements and the FDIC will look unfavorably upon any golden parachute agreement which is entered into after the date of this proposal but before the effective date of the final regulation as an attempt to circumvent the regulation.

*10. Prior Approval of Otherwise Prohibited Golden Parachutes*

Section 359.2(b) of the First Proposal permits the payment of a golden parachute provided that such payment is approved by the institution's appropriate federal banking agency, with the written concurrence of the FDIC. Several comment letters pointed out, however, that this subsection afforded only depository institutions and holding companies the right to request such an exception. In the interest of fairness, the FDIC has revised this subsection to permit institution-affiliated parties to also request permission to receive such a payment.[10]

Section 359.2(b) of the First Proposal also requires that applicants requesting permission to make or receive an otherwise prohibited golden parachute payment shall provide the appropriate federal banking agency and the FDIC with certain information. First Proposal §§ 359.2(b) (1) through (4). A significant number of commentators asserted that this section of the First Proposal improperly reverses the burden of proof as delineated in section 18(k)(2) of the FDI Act to compel the applicant to demonstrate that the applicant has no reasonable basis to believe that the institution-affiliated party to whom the payment is to be made has committed any fraudulent act, is substantially responsible for the insolvency of the institution or holding company, has materially violated any banking law or regulation or has violated certain specific federal criminal laws. These comment letters also asserted that the structure of the proposed regulation requires the applicant to ''prove a negative'', an impossible task.

The FDIC is of the opinion that the arguments advanced in the comment letters concerning an inappropriate reversal of the burden of proof are misplaced. First, a careful reading of section 18(k)(2) of the FDI Act reveals that it does not establish a burden of proof, in the traditional legal sense, at all. What this subsection does is to delineate certain factors which Congress suggests that the FDIC consider in evaluating a request to pay or receive an otherwise prohibited golden parachute payment. This list of factors is not mandatory, nor is it exclusive. The only mandatory language in section 18(k)(2) requires the FDIC to prescribe whatever factors it ultimately decides to consider in any regulation it promulgates. The statute does not address the question of which party bears the burden of producing evidence or the burden of proof. What the FDIC has chosen to do in the First Proposal is to place the burden of production of evidence where it most reasonably belongs, with the party that possesses or has the most complete access to the information which is necessary for the Corporation to make an informed and equitable judgment. The FDIC is not requiring that a party seeking to make or receive a golden parachute payment ''prove his or her innocence''.

In response to the comment letters, the FDIC has revised § 359.2(b) of the First Proposal in an effort to clarify how this section will function. These revisions make it clear that the depository institution, holding company or institution-affiliated party seeking a determination that an otherwise prohibited golden parachute payment is permissible is required to inform the appropriate federal banking agency and the FDIC of any information of which it is aware that would indicate that there is a reasonable basis to believe that the institution-affiliated party in question satisfies any of the criteria set forth in §§ 359.4(d) (1) through (4) of the Second Proposal. If the applicant is not aware of any such information, it shall so certify.

*11. Condition of Institution at Time of Termination of Employment Is Crucial*

Previously in this preamble, we clarified that the Second Proposal should not be construed to cut off the payment of retirement benefits to former institution-affiliated employees who retired and began receiving retirement payments at a time when the depository institution or its holding company was not troubled, in the event that such institution or holding company subsequently becomes troubled. This same question arises in the case of non-retirement benefits. For example, while most golden parachute payments are lump sum, the Corporation is aware of instances where such payments are made in periodic installments. The

[10] Such a request should be in letter form to the FDIC's Regional Director (DOS) for the region in which the depository institution or holding company is headquartered.

FDIC is of the opinion that as long as the institution-affiliated party did not terminate his/her employment in contemplation of the depository institution or holding company becoming troubled in an effort to circumvent the regulation's proscriptions, such payments should be allowed to continue because the nexus between the institution-affiliated party and the institution's or holding company's troubled condition would not be present. However, this is not meant to suggest that such retirement benefits or permissible golden parachute payments will be continued in the event that the institution is placed into conservatorship or receivership.

*12. Other Golden Parachute Issues*

A number of comment letters took issue with the fact that the First Proposal prohibits the payment of a golden parachute by both an insured depository institution and its holding company when either of those entities is troubled. These letters suggested that the First Proposal should be revised to provide that only the troubled entity be prohibited from making a golden parachute payment. The FDIC has carefully considered this suggestion and has decided to scale back its original proposal and to adopt a modified version of the commenters' suggestion. Thus, a troubled insured depository institution may not make a golden parachute payment to any of its IAPs, excluding any of the exceptions described previously. In addition, a depository institution holding company may not make a golden parachute payment to any of its IAPs if it is troubled and may not pay a golden parachute to an IAP of an affiliated insured depository institution if that institution is troubled.

The FDIC received several comment letters which suggested that the Corporation make an exception to the golden parachute prohibition for depository institutions with a composite rating of ''4'', but which exceed all applicable regulatory capital requirements. The FDIC has decided not to incorporate this exception into the Second Proposal since an institution's capital level is only one indication of its overall financial health.

A significant number of comment letters expressed concern that the criteria delineated in § 359.1(g)(1)(ii)(C) of the First Proposal (that the depository institution or holding company be designated troubled by its primary federal regulator) is overly broad since it would include any institution or holding company which is subject to a written supervisory agreement even if that institution or holding company is not experiencing significant financial difficulties. Since the nature of written supervisory agreements vary and that the facts of each case are so individual, the FDIC prefers not to make a blanket exception to the rule in this case. Rather, the Corporation will consider exceptions on a case by case basis pursuant to § 359.4(d) of the Second Proposal.

**Issues Raised By Commentators—Indemnification Payments**

The FDIC has carefully reviewed and analyzed the comment letters with regard to the indemnification portion of the First Proposal.

*1. Criteria for Making Indemnification Payments*

Section 359.5 of the First Proposal delineates the circumstances under which an insured depository institution or depository institution holding company may make or agree to make indemnification payments to institution-affiliated parties. The comment letters made it clear that this section of the First Proposal is viewed as being just as significant as the sections dealing with golden parachute payments. The overwhelming majority of comment letters expressed the opinion that the prohibitions contained in this section of the First Proposal would make it unreasonably difficult for depository institutions and holding companies to attract and retain competent officers, directors and employees.

Section 359.5(a) of the First Proposal sets forth six criteria which must be met in order for a depository institution or holding company to make or agree to make indemnification payments to an institution-affiliated party. The majority of comment letters which raised indemnification issues focused on § 359.5(a)(1) of the First Proposal. This subsection provides that in order to indemnify an institution-affiliated party, the institution's or holding company's board of directors, in good faith, must determine in writing that the institution-affiliated party has a ''substantial likelihood of prevailing on the merits''. The consensus of commentators' opinions was that this standard is so difficult to meet that a board of directors very rarely, if ever, would be able to authorize indemnification. Many comment letters pointed out that requests for indemnification are customarily made at the commencement of an administrative action or civil proceeding when the institution-affiliated party and his/her counsel are just beginning to assemble their case. Thus, many of the facts and circumstances surrounding the conduct in question are not yet known. This being the case, the commentators argued that it would be very difficult for a board of directors to find that an institution-affiliated party had a substantial likelihood of prevailing on the merits. Too many unanswered questions would be present for such a finding to be realistically made. The commentators recommended a variety of lesser standards, most notably that the institution-affiliated party ''acted in good faith and in a manner he/she believed to be in the best interests of the institution'', that there is a ''reasonable likelihood of prevailing on the merits'' or that the FDIC defer to the applicable state law standard.

After considerable review, the FDIC agrees with the position expressed by the majority of commentators that the standard contained in § 359.5(a)(1) of the First Proposal imposes too significant an obstacle to reasonable and fair indemnification payments. However, the Corporation does not agree with the commentators who suggested that it should defer to the applicable state law standard. In enacting section 18(k) of the FDI Act, Congress made it quite clear that there was to be one uniform federal standard to govern the making of indemnification payments by insured depository institutions and depository institution holding companies. In an effort to balance the need of depository institutions to attract and retain qualified directors and management with the protection of the deposit insurance funds, the FDIC has decided to revise § 359.5(a)(1) of the First Proposal to utilize a somewhat less stringent standard. Therefore, § 359.5 of the Second Proposal requires that the depository institution's or holding company's board of directors determines in writing that the institution-affiliated party requesting indemnification ''acted in good faith and in a manner which he/she believed to be in the best interests of the institution''. Of course, the FDIC expects that an institution's board of directors will make such a finding only after due investigation.

*2. Continual Monitoring by Board of Directors Not Required*

A significant number of comment letters also took issue with the FDIC's requirement, contained in § 359.5(a)(3) of the First Proposal, that the institution's or holding company's board of directors continually monitor actions against institution-affiliated parties so that it can reassess its

decision to permit indemnification. These commentators expressed the opinion that such a requirement places an unfair and undue burden on both the board of directors and the institution-affiliated party seeking indemnification. The proposed standard would mean that a board's decision would never be ''final'', regardless of the amount of time, effort and painstaking review that went into it. It would also mean that an institution-affiliated party could never depend on indemnification since a prior decision to approve indemnification could be revoked at any time. The FDIC agrees that there is value in encouraging an amount of certainty in such cases. Thus, this requirement has been deleted from the Second Proposal.

*3. Permissible Indemnification Payments*

Section 359.5(a)(4) of the First Proposal prohibits the use of indemnification payments to pay or reimburse an institution-affiliated party for the amount of, or any cost incurred in connection with, any settlement of an administrative proceeding or civil action instituted by any federal banking agency or any judgment or penalty imposed with respect to any such matter where the IAP is assessed a civil money penalty, removed from office or made subject to a cease and desist order. The FDIC received a substantial number of comment letters which addressed this particular restriction. Interestingly, however, while the proscription of the use of indemnification to pay for settlements was criticized, the arguments against it were often diametrically opposed. For example, a number of comment letters made the argument that to prohibit the use of indemnification to pay for costs associated with settlements would force institution-affiliated parties to litigate every action to its ultimate conclusion in the hope of earning the right to be indemnified. On the other hand, an approximately equal number of comment letters argued just as vociferously that this requirement would compel institution-affiliated parties to settle actions immediately before costs became prohibitively high, thereby denying them an opportunity to defend themselves. Other comment letters pointed out that negotiated settlements benefit all parties involved and that a settlement where the institution-affiliated party does not admit to wrongdoing should not come within the definition of indemnification payment contained in section 18(k)(5)(A) of the FDI Act because the settlement agreement would not contain any penalty or require any affirmative action that would, if embodied in a final order, preclude indemnification under FDI Act section 18(k)(5)(A) and § 359.5(a)(5) of the First Proposal.

After considerable review, the FDIC has chosen not to permit indemnification of settlement costs by the depository institution or holding company where the IAP is assessed a civil money penalty, removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution or required to cease and desist from or take any affirmative action described in section 8(b) of the Act.[11] However, insured depository institutions and depository institution holding companies may purchase commercial insurance policies or fidelity bonds, at a reasonable cost, which may pay all costs incurred in an action or proceeding which is settled, except civil money penalties and judgements. As we noted earlier, it is also permissible for insurance policies and bonds to pay restitution to the depository institution, holding company or receiver.

*4. Involvement by Majority or All of Board of Directors*

A significant number of comment letters pointed out that § 359.5(b) of the First Proposal, which prohibits an institution-affiliated party who is requesting indemnification from participating in any way in the board's discussion and approval of such payments, does not take into account situations where the majority or all the members of the board of directors are the subject of an enforcement action or civil proceeding. Thus, consistent with several recommendations we received, the FDIC has added new §§ 359.5 (c) and (d) to the Second Proposal. Section 359.5(c) provides that if a majority of the members of an institution's or holding company's board of directors are named as respondents in an administrative proceeding or civil action commenced by any federal banking agency the remaining board member(s) may either make an independent decision concerning authorization of indemnification payments or retain independent legal counsel to provide an opinion as to whether the conditions contained in § 359.5(a) of the Second Proposal have been met. If the entire board of directors is subject to the administrative action or civil proceeding, § 359.5(d) of the Second Proposal requires the board to retain independent legal counsel to opine as to whether the conditions set forth in § 359.5(a) have been met. If independent legal counsel is of the opinion that these conditions have been met, the board may rely on such an opinion in authorizing the requested indemnification.[12] The FDIC would regard legal counsel as being ''independent'' (for purposes of this regulation) if the attorney(s) is not a member of the depository institution's or holding company's in-house legal staff, does not have an ongoing relationship with the depository institution or holding company and no other conflict of interest is present. The FDIC is of the opinion that these procedures effectively address the difficulties inherent in situations where the majority of or the entire board of directors of an institution or holding company are the subjects of an enforcement proceeding. The use of independent legal counsel ensures an unbiased review of the five criteria necessary to approve indemnification and does not impose any undue hardship upon the depository institution or holding company in question.

*5. Definition of Indemnification Payment*

Section 359.1(h) of the First Proposal contained the definition of ''indemnification payment''. A number of comment letters expressed concern that even if an institution or holding company could qualify to purchase a commercial insurance policy or fidelity bond which would cover the costs of defending and/or settling an administrative action or civil proceeding commenced by a federal banking agency, the proposed regulation prohibited an institution or holding company from purchasing such coverage. First Proposal § 359.1(h)(2). Upon further consideration, as we noted earlier herein, the FDIC is of the opinion that if a depository institution or holding company can purchase, at reasonable rates, a commercial insurance policy or fidelity bond which will pay the costs of defending and/or settling an administrative action or civil proceeding commenced by a federal banking agency, neither the statute nor any consideration of safe and sound banking practice require the Corporation to interfere with such an arrangement. Section 359.1(l)(2) of the Second Proposal reflects this change. This revision should address the concerns

[11] If indemnification was authorized and paid by the depository institution or holding company pursuant to section 359.5 of this part, the IAP is obligated to reimburse the institution or holding company, respectively.

[12] Of course, the board of directors could decline to approve the indemnification request despite counsel's favorable opinion.

raised by numerous comment letters that the proposed regulation's restriction would impair the ability of depository institutions and holding companies to attract and retain competent management and directors. It is important to emphasize that the Second Proposal would prohibit such an insurance policy or bond from being used to pay or reimburse an institution-affiliated party for the amount of any judgment or civil money penalty assessed against him/her.

*6. Fees Incurred During Investigations*

The First Proposal did not address the question of whether indemnification for counsel fees incurred during the investigative stage of a potential administrative enforcement action should be permitted. In view of the definition of indemnification payment contained in section 18(k)(5)(A) of the FDI Act and its specific reference to ''any administrative proceeding or civil action instituted by the appropriate Federal banking agency'', the FDIC is of the opinion that indemnification of such expenses incurred prior to the commencement of a formal action should not be prohibited.

**Technical Amendments**

The comment letters also suggested a number of technical revisions to the First Proposal to clarify certain provisions or avoid certain anomalies. The definition of golden parachute payment contained in section 18(k)(4)(A) of the FDI Act refers to ''any payment (or any agreement to make any payment) in the nature of compensation * * *.'' The definition contained in section 359.1(g)(1) of the First Proposal deleted the phrase ''in the nature of compensation''. Several comment letters pointed out that the deletion of this phrase from the regulatory definition could be construed to prohibit the customary payment of certain accrued benefits upon termination of employment (e.g., accrued vacation, sick leave, etc.). Since it is not the FDIC's intent to prohibit depository institutions and holding companies, even those that are troubled, from paying terminating employees for accrued but unused benefits such as vacation or sick time, this phrase has been added to the Second Proposal.[13] Second Proposal § 359.1(f)(1).

Several comment letters also pointed out that the definition of ''*bona fide* deferred compensation plan or arrangement'' contained in § 359.1(d)(1) of the First Proposal did not allow for reasonable earnings on elective deferred compensation. Section 359.1(d)(1) of the Second Proposal makes it clear that a *bona fide* deferred compensation plan includes the reasonable investment return on such elective deferrals.

Section 18(k)(4)(C) of the FDI Act and § 359.1(g)(2) of the First Proposal delineate certain types of payments which are not included within the definition of golden parachute. In describing such payments, the words ''nondiscriminatory'' and ''benefit plan'' are used. In view of the fact that the precise definition of these terms is very important, the FDIC has added them to the list of definitions contained in the Second Proposal. Second Proposal §§ 359.1 (c) and (j). In a similar vein, several comment letters suggested that the term ''indemnification payment'' contained in § 359.1(h) of the First Proposal be changed to ''prohibited indemnification payment'' in order to avoid confusion with certain types of indemnification payments which are permissible. The FDIC agrees with and has adopted this suggestion. Second Proposal § 359.1(l).

A significant number of comment letters pointed out that while the definition of an excess deferred compensation plan contained in § 359.1(d)(2)(i) of the First Proposal correctly referenced the limitations imposed by section 415 of the Internal Revenue Code of 1986, sections 401(a)(17) and 402(g) of the Code are also applicable, but were not referenced. The FDIC has revised the Second Proposal to include references to these two provisions of the Internal Revenue Code, as well as any other applicable provisions. Second Proposal § 359.1(d)(2)(i).

A very small number of comment letters informed us that certain states, particularly California, have statutes which require all covered employers to pay severance benefits in certain circumstances. These commentators were concerned that the definition of golden parachute payment in the First Proposal would conflict with such state statutes. In order to avoid such a conflict, the FDIC revised the definition of golden parachute payment to explicitly exclude any severance or similar payment which is required to be paid pursuant to state law which applies to all employers, except those that are exempted due to their small number of employees or other similar criteria. Second Proposal § 359.1(f)(2)(vi).

The FDIC has also chosen to clarify the definition of ''payment'' contained in § 359.1(*l*) of the First Proposal by making it explicit that the phrase ''the conferring of any benefit'' includes the granting of stock options and stock appreciation rights. Second Proposal § 359.1(k)(3).

The FDIC has added a new subsection to the proposed regulation, § 359.6, entitled ''Filing Instructions''. This new subsection contains instructions on where and how to file written requests for prior approval to make certain payments which are otherwise not permitted.

**Closed Bank/Receivership Issues**

The FDIC has added a new § 359.7 to the proposed regulation to make it clear that this regulation would not bind any receiver of a failed insured depository institution. The fact that the FDIC or any other federal banking agency consents to certain types of payments does not imply that the approving agency or the receiver will be responsible for making the payments in event of the insolvency of the institution or that the recipient will receive some sort of preference over other creditors from the receivership.

**Other Enforcement Authority**

The FDIC notes that its authority to regulate golden parachutes and indemnification payments pursuant to section 18(k) of the FDI Act is in addition to its safety and soundness enforcement authority pursuant to section 8 of the FDI Act.

**Delegations of Authority**

The FDIC is also proposing to amend § 303.7 of its regulations, 12 CFR 303.7, to add a new paragraph (g) which would delegate the Board's authority to the Executive Director, Supervision and Resolutions, Director of the Division of Supervision, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or deny requests to make excess nondiscriminatory severance plan payments as permitted by § 359.1(f)(2)(v) and golden parachute payments to ''white knights'', in change of control situations and other golden parachute payments which are not covered under any of the regulation's explicit exceptions, as permitted by § 359.4.

**Request for Public Comment**

The FDIC hereby requests comment on all aspects of the Second Proposal, including both legal and policy considerations. In particular, the Corporation is especially interested in whether the revisions to the First Proposal in response to the first set of

[13] Claims for certain benefits may not be provable or constitute ''actual direct compensatory damages'' under 12 U.S.C. 1821(e)(3) if the institution is placed into receivership. This regulation does not provide otherwise.

public comment letters adequately address the concerns which were raised. Of course, commenters should discuss any new issues which have been raised as a result of these revisions by the FDIC. Interested parties are invited to submit comments during a 60 day comment period.

**List of Subjects**

*12 CFR Part 303*

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

*12 CFR Part 359*

Banks, Banking, Golden parachute payments, Indemnity payments.

For the reasons set out in the preamble, the FDIC Board of Directors hereby proposes to amend 12 CFR part 303 and to add part 359 to title 12, chapter III, subchapter B, of the Code of Federal Regulations as follows:

## PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 continues to read as follows:

**Authority:** 12 U.S.C. 378, 1813, 1815, 1816, 1817(a)(2)(b), 1817(j), 1818, 1819 (''Seventh'', ''Eighth'' and ''Tenth''), 1828, 1831e, 1831o, 1831p–1(a); 15 U.S.C. 1607.

2. In § 303.7, the section heading is revised and a new paragraph (g) is added to read as follows:

**§ 303.7 Delegation of authority to the Executive Director for Supervision and Resolutions, the Director of the Division of Supervision and to the associate directors, regional directors and deputy regional directors to act on certain applications, requests, and notices of acquisition of control.**

* * * * *

(g) *Requests pursuant to section 18(k) of the Act.* Authority is delegated to the Executive Director, the Director, and where confirmed in writing by the Executive Director or Director, to an associate director, or to the appropriate regional director or deputy regional director, to approve or deny requests pursuant to section 18(k) of the Act to make:

(1) Excess nondiscriminatory severance plan payments as provided by 12 CFR 359.1(f)(2)(v); and

(2) Golden parachute payments permitted by 12 CFR 359.4.

3. New part 359 is added to read as follows:

## PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

Sec.

359.0 Scope.
359.1 Definitions.
359.2 Golden parachute payments prohibited.
359.3 Prohibited indemnification payments.
359.4 Permissible golden parachute payments.
359.5 Permissible indemnification payments.
359.6 Filing instructions.
359.7 Applicability in the event of receivership.

**Authority:** 12 U.S.C. 1828(k).

### § 359.0 Scope.

(a) This part limits and/or prohibits, in certain circumstances, the ability of insured depository institutions, their subsidiaries and affiliated depository institution holding companies to make golden parachute and indemnification payments to institution-affiliated parties (IAP).

(b) The limitations on golden parachute payments apply to troubled insured depository institutions which seek to make golden parachute payments to their IAPs. The limitations also apply to depository institution holding companies which are troubled and seek to make golden parachute payments to their IAPs as well as healthy holding companies which seek to make golden parachute payments to IAPs of a troubled insured depository institution subsidiary. A ''golden parachute payment'' is generally considered to be any payment to an IAP which is contingent on the termination of that person's employment and is received when the insured depository institution making the payment is troubled or, if the payment is being made by an affiliated holding company, either the holding company itself or the insured depository institution employing the IAP, is troubled. The definition of golden parachute payment does not include payments pursuant to qualified retirement plans, nonqualified *bona fide* deferred compensation plans, nondiscriminatory severance pay plans, other types of common benefit plans, state statutes and death benefits. Certain limited exceptions to the golden parachute payment prohibition are provided for in cases involving the hiring of a ''white knight'' and unassisted changes in control. A procedure is also set forth whereby an institution or IAP can request permission to make what would otherwise be a prohibited golden parachute payment.

(c) The limitations on indemnification payments apply to all insured depository institutions, their subsidiaries and affiliated depository institution holding companies regardless of their financial health. Generally, this part prohibits insured depository institutions, their subsidiaries and affiliated holding companies from indemnifying an IAP for costs sustained with regard to an administrative or civil enforcement action commenced by any federal banking agency which results in a final order or settlement pursuant to which the IAP is assessed a civil money penalty, removed from office, prohibited from participating in the affairs of an insured depository institution or required to cease and desist from or take an affirmative action described in section 8(b) (12 U.S.C. 1818(b)) of the Federal Deposit Insurance Act (FDI Act). However, there are exceptions to this general prohibition. First, an institution or holding company may purchase commercial insurance to cover such expenses, except judgments and penalties. Second, the institution or holding company may indemnify an IAP directly, except for judgments and penalties, if its board of directors makes certain specific findings.

### § 359.1 Definitions.

(a) *Act* means the Federal Deposit Insurance Act, as amended (12 U.S.C. 1811, *et seq.*).

(b) *Appropriate federal banking agency, bank holding company, depository institution holding company* and *savings and loan holding company* have the meanings given to such terms in section 3 of the Act.

(c) *Benefit plan* means any plan, contract, agreement or other arrangement which is an ''employee welfare benefit plan'' as that term is defined in section 3(1) of the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1002(1)), or other usual and customary plans such as dependent care, tuition reimbursement, group legal services or cafeteria plans; provided however, that such term shall not include any plan intended to be subject to paragraphs (f)(2)(iii) and (v) of this section.

(d) *Bona fide deferred compensation plan or arrangement* means any plan, contract, agreement or other arrangement whereby:

(1) An IAP voluntarily elects to defer all or a portion of the reasonable compensation, wages or fees paid for services rendered which otherwise would have been paid to such party at the time the services were rendered (including a plan that provides for the crediting of a reasonable investment return on such elective deferrals) and

the insured depository institution or depository institution holding company either:

(i) Recognizes compensation expense and accrues a liability for the benefit payments according to generally accepted accounting principles (GAAP); or

(ii) Segregates or otherwise sets aside assets in a trust which may only be used to pay plan and other benefits, except that the assets of such trust may be available to satisfy claims of the institution's or holding company's creditors in the case of insolvency; or

(2) An insured depository institution or depository institution holding company establishes a nonqualified deferred compensation or supplemental retirement plan, other than an elective deferral plan described in paragraph (e)(1) of this section:

(i) Solely for the purpose of providing benefits for certain IAPs in excess of the limitations on contributions and benefits imposed by sections 415, 401(a)(17), 402(g) or any other applicable provision of the Internal Revenue Code of 1986 (26 U.S.C. 415, 401(a)(17), 402(g)); or

(ii) Primarily for the purpose of providing supplemental retirement benefits or other deferred compensation for a select group of directors, management or highly compensated employees (excluding severance payments described in paragraph (f)(2)(v) of this section and permissible golden parachute payments described in § 359.4); and

(3) In the case of any nonqualified deferred compensation or supplemental retirement plans as described in paragraphs (d)(1) and (2) of this section, the following requirements shall apply:

(i) The plan was in effect at least one year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(ii) Any payment made pursuant to such plan is made in accordance with the terms of the plan as in effect no later than one year prior to any of the events described in paragraph (f)(1)(ii) of this section and in accordance with any amendments to such plan during such one year period that do not increase the benefits payable thereunder;

(iii) The IAP has a vested right, as defined under the applicable plan document, at the time of termination of employment to payments under such plan;

(iv) Benefits under such plan are accrued each period only for current or prior service rendered to the employer (except that an allowance may be made for service with a predecessor employer);

(v) Any payment made pursuant to such plan is not based on any acceleration of vesting or accrual of benefits which occurs at any time later than one year prior to any of the events described in paragraph (f)(1)(ii) of this section;

(vi) The insured depository institution or depository institution holding company has previously recognized compensation expense and accrued a liability for the benefit payments according to GAAP or segregated or otherwise set aside assets in a trust which may only be used to pay plan benefits, except that the assets of such trust may be available to satisfy claims of the institution's or holding company's creditors in the case of insolvency; and

(vii) Payments pursuant to such plans shall not be in excess of the accrued liability computed in accordance with GAAP.

(e) *Corporation* means the Federal Deposit Insurance Corporation, in its corporate capacity.

(f)(1) The term *golden parachute payment* means any payment (or any agreement to make any payment) in the nature of compensation by any insured depository institution or an affiliated depository institution holding company for the benefit of any current or former IAP pursuant to an obligation of such institution or holding company that:

(i) Is contingent on, or by its terms is payable on or after, the termination of such party's primary employment or affiliation with the institution or holding company; and

(ii) Is received on or after, or is made in contemplation of, any of the following events:

(A) The insolvency (or similar event) of the insured depository institution which is making the payment or bankruptcy or insolvency (or similar event) of the depository institution holding company which is making the payment; or

(B) The appointment of any conservator or receiver for such insured depository institution; or

(C) A determination by the insured depository institution's or depository institution holding company's appropriate federal banking agency, respectively, that the insured depository institution or depository institution holding company is in a troubled condition, as defined in the applicable regulations of the appropriate federal banking agency (§ 303.14(a)(4) of this chapter); or

(D) The insured depository institution is assigned a composite rating of 4 or 5 by the appropriate federal banking agency or informed in writing by the Corporation that it is rated a 4 or 5 under the Uniform Financial Institutions Rating System of the Federal Financial Institutions Examination Council, or the depository institution holding company is assigned a composite rating of 4 or 5 or unsatisfactory by its appropriate federal banking agency; or

(E) The insured depository institution is subject to a proceeding to terminate or suspend deposit insurance for such institution; and

(iii)(A) Is payable to an IAP whose employment by or affiliation with an insured depository institution is terminated at a time when the insured depository institution by which the IAP is employed or with which the IAP is affiliated satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A) through (E) of this section, or in contemplation of any of these conditions; or

(B) Is payable to an IAP whose employment by or affiliation with an insured depository institution holding company is terminated at a time when the insured depository institution holding company by which the IAP is employed or with which the IAP is affiliated satisfies any of the conditions enumerated in paragraphs (f)(1)(ii)(A), (C) or (D) of this section, or in contemplation of any of these conditions.

(2) *Exceptions.* The term *golden parachute payment* shall not include:

(i) Any payment made pursuant to a pension or retirement plan which is qualified (or is intended within a reasonable period of time to be qualified) under section 401 of the Internal Revenue Code of 1986 (26 U.S.C. 401) or pursuant to a pension or other retirement plan which is governed by the laws of any foreign country; or

(ii) Any payment made pursuant to a benefit plan as that term is defined in paragraph (c) of this section; or

(iii) Any payment made pursuant to a *bona fide* deferred compensation plan or arrangement as defined in paragraph (d) of this section; or

(iv) Any payment made by reason of termination caused by the death or disability of an institution-affiliated party; or

(v) Any payment made pursuant to a nondiscriminatory severance pay plan or arrangement which provides for payment of severance benefits to all eligible employees upon involuntary termination other than for cause, voluntary resignation, or early retirement, in conjunction with a reduction in force instituted by the insured depository institution or depository institution holding company;

*provided, however,* that no employee shall receive any such payment which exceeds the base compensation paid to such employee during the twelve months (or such longer period or greater benefit as the Corporation shall consent to) immediately preceding termination of employment, resignation or early retirement, and such severance pay plan or arrangement shall not have been adopted or modified to increase the amount or scope of severance benefits at a time when the insured depository institution or depository institution holding company was in a condition specified in paragraph (f)(1)(ii) of this section or in contemplation of such a condition without the prior written consent of the appropriate federal banking agency; *provided further, however,* that no such payment shall be made to any senior executive officer (as defined in § 303.14(a)(3) of this chapter) of any insured depository institution or depository institution holding company without providing 30 days prior written notice to the appropriate federal banking agency and the FDIC; or

(vi) Any severance or similar payment which is required to be made pursuant to a state statute or foreign law which is applicable to all employers within the appropriate jurisdiction (with the exception of employers that may be exempt due to their small number of employees or other similar criteria); or

(vii) Any other payment which the Corporation determines to be permissible in accordance with § 359.4 of this part.

(g) *Insured depository institution* means any bank or savings association the deposits of which are insured by the Corporation pursuant to the Act, or any subsidiary thereof.

(h) *Institution-affiliated party (IAP)* means:

(1) Any director, officer, employee, or controlling stockholder (other than a depository institution holding company) of, or agent for, an insured depository institution or depository institution holding company;

(2) Any other person who has filed or is required to file a change-in-control notice with the appropriate federal banking agency under section 7(j) of the Act (12 U.S.C. 1817(j));

(3) Any shareholder (other than a depository institution holding company), consultant, joint venture partner, and any other person as determined by the appropriate federal banking agency (by regulation or case-by-case) who participates in the conduct of the affairs of an insured depository institution or depository institution holding company; and

(4) Any independent contractor (including any attorney, appraiser, or accountant) who knowingly or recklessly participates in: Any violation of any law or regulation, any breach of fiduciary duty, or any unsafe or unsound practice, which caused or is likely to cause more than a minimal financial loss to, or a significant adverse effect on, the insured depository institution or depository institution holding company.

(i) *Liability or legal expense* means:

(1) Any legal or other professional fees and expenses incurred in connection with any claim, proceeding, or action;

(2) The amount of, and any cost incurred in connection with, any settlement of any claim, proceeding, or action; and

(3) The amount of, and any cost incurred in connection with, any judgment or penalty imposed with respect to any claim, proceeding, or action.

(j) *Nondiscriminatory* means that the plan, contract or arrangement in question applies to all employees of an insured depository institution or depository institution holding company who meet reasonable and customary eligibility requirements applicable to all employees, such as minimum length of service requirements. A nondiscriminatory plan, contract or arrangement may provide different benefits to IAPs based only upon length of service and/or position. In the event that an employee's position is used as a basis for providing a different level of benefits, employees who are not senior executive officers (as defined in § 303.14(a)(3) of this chapter) of the insured depository institution or depository institution holding company shall be treated more favorably than senior executive officers.

(k) *Payment* means:

(1) Any direct or indirect transfer of any funds or any asset;

(2) Any forgiveness of any debt or other obligation;

(3) The conferring of any benefit, including but not limited to stock options and stock appreciation rights; and

(4) Any segregation of any funds or assets, the establishment or funding of any trust or the purchase of or arrangement for any letter of credit or other instrument, for the purpose of making, or pursuant to any agreement to make, any payment on or after the date on which such funds or assets are segregated, or at the time of or after such trust is established or letter of credit or other instrument is made available, without regard to whether the obligation to make such payment is contingent on:

(i) The determination, after such date, of the liability for the payment of such amount; or

(ii) The liquidation, after such date, of the amount of such payment.

(l) *Prohibited indemnification payment.* (1) The term *prohibited indemnification payment* means any payment (or any agreement or arrangement to make any payment) by any insured depository institution or an affiliated depository institution holding company for the benefit of any person who is or was an IAP of such insured depository institution, to pay or reimburse such person for any liability or legal expense with regard to any administrative proceeding or civil action instituted by any federal banking agency which results in a final order or settlement pursuant to which such person:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution.

(2) *Exception.* The term *prohibited indemnification payment* shall not include any reasonable payment by an insured depository institution or depository institution holding company which is used to purchase any commercial insurance policy or fidelity bond, provided that such insurance policy or bond shall not be used to pay or reimburse an IAP for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency, but may pay the amount of any restitution to the insured depository institution, depository institution holding company or receiver.

### § 359.2 Golden parachute payments prohibited.

No insured depository institution or depository institution holding company shall make or agree to make any golden parachute payment, except as provided in this part.

### § 359.3 Prohibited indemnification payments.

No insured depository institution or depository institution holding company shall make or agree to make any prohibited indemnification payment, except as provided in this part.

**§ 359.4 Permissible golden parachute payments.**

(a) An insured depository institution or depository institution holding company may agree to make or may make a golden parachute payment if and to the extent that:

(1) The appropriate federal banking agency, with the written concurrence of the Corporation, determines that such a payment or agreement is permissible; or

(2) Such an agreement is made in order to hire a person to become an IAP either at a time when the insured depository institution or depository institution holding company satisfies or in an effort to prevent it from imminently satisfying any of the criteria set forth in § 359.1(f)(1)(ii), and the institution's appropriate federal banking agency and the Corporation consent in writing to the amount and terms of the golden parachute payment. Such consent by the FDIC and the institution's appropriate federal banking agency shall not improve the IAP's position in the event of the insolvency of the institution since such consent can neither bind a receiver nor affect the provability of receivership claims. In the event that the institution is placed into receivership or conservatorship, the FDIC and/or the institution's appropriate federal banking agency shall not be obligated to pay the promised golden parachute and the IAP shall not be accorded preferential treatment on the basis of such prior approval; or

(3) Such a payment is made pursuant to an agreement which provides for a reasonable severance payment, not to exceed twelve months salary, to an IAP in the event of a change in control of the insured depository institution; *provided, however,* that an insured depository institution or depository institution holding company shall obtain the consent of the appropriate federal banking agency prior to making such a payment and this paragraph (a)(3) shall not apply to any change in control of an insured depository institution which results from an assisted transaction as described in section 13 of the Act (12 U.S.C. 1823) or the insured depository institution being placed into conservatorship or receivership; and

(4) An insured depository institution, depository institution holding company or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section shall demonstrate that it does not possess and is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the depository institution or depository institution holding company that has had or is likely to have a material adverse effect on the institution or holding company;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator or receiver for, or the troubled condition, as defined by applicable regulations of the appropriate federal banking agency, of the insured depository institution, depository institution holding company or any insured depository institution subsidiary of such holding company;

(iii) The IAP has materially violated any applicable federal or state banking law or regulation that has had or is likely to have a material effect on the insured depository institution or depository institution holding company; and

(iv) The IAP has violated or conspired to violate section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or section 1341 or 1343 of such title affecting a federally insured financial institution as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, the appropriate federal banking agency and the Corporation may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the insured depository institution or depository institution holding company, and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances which would indicate that the proposed payment would be contrary to the intent of section 18(k) of the Act or this part.

**§ 359.5 Permissible indemnification payments.**

(a) An insured depository institution or depository institution holding company may make or agree to make reasonable indemnification payments to an IAP with respect to an administrative proceeding or civil action initiated by any federal banking agency if:

(1) The insured depository institution's or depository institution holding company's board of directors, in good faith, determines in writing after due investigation and consideration that the institution-affiliated party acted in good faith and in a manner he/she believed to be in the best interests of the institution;

(2) The insured depository institution's or depository institution holding company's board of directors, respectively, in good faith, determines in writing after due investigation and consideration that the payment of such expenses will not materially adversely affect the institution's or holding company's safety and soundness;

(3) The indemnification payments are limited to the payment or reimbursement of reasonable legal, professional or other expenses incurred in connection with an IAP's involvement in an administrative proceeding or civil action instituted by any federal banking agency; but in no event shall such indemnification pay or reimburse an IAP for the amount of, or any cost incurred in connection with, any judgment, penalty or settlement with respect to any such claim, proceeding or action, pursuant to which the IAP:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution;

(4) The IAP agrees in writing to reimburse the insured depository institution or depository institution holding company for such indemnification payments in the event that the proceeding or action results in a final order or is settled on terms under which the IAP:

(i) Is assessed a civil money penalty;

(ii) Is removed from office or prohibited from participating in the conduct of the affairs of the insured depository institution; or

(iii) Is required to cease and desist from or take any affirmative action described in section 8(b) of the Act with respect to such institution; and

(5) The insured depository institution or depository institution holding company provides the appropriate federal banking agency and the FDIC with prior written notice of its board of directors' authorization of such indemnification.

(b) An IAP requesting indemnification payments shall not participate in any way in the board's discussion and approval of such payments; *provided, however,* that such IAP may present his/her request to the board and respond to any inquiries from the board concerning his/her involvement in the circumstances giving rise to the

administrative proceeding or civil action.

(c) In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with an opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

(d) In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with an opinion of counsel as to whether the conditions delineated in paragraph (a) of this section have been met. If independent legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

**§ 359.6 Filing instructions.**

Requests to make excess nondiscriminatory severance plan payments pursuant to § 359.1(f)(2)(v) and golden parachute payments permitted by § 359.4 shall be submitted in writing to the FDIC regional director (Supervision) for the region in which the institution is located. The request shall be in letter form and shall contain all relevant factual information as well as the reasons why such approval should be granted. In the event that the consent of the institution's primary federal regulator is required in addition to that of the FDIC, the requesting party shall submit a copy of its letter to the FDIC to the institution's primary federal regulator. In the case of national banks, such written requests shall be submitted to the OCC district office where the institution is located. In the case of state member banks and bank holding companies, such written requests shall be submitted to the Federal Reserve district bank where the institution or holding company, respectively, is located. In the case of savings associations and savings association holding companies, such written requests shall be submitted to the OTS regional office where the institution or holding company, respectively, is located. In cases where the prior consent of only the institution's primary federal regulator is required and that agency is not the FDIC, a written request satisfying the requirements of this paragraph shall be submitted to the primary federal regulator as described in this paragraph.

**§ 359.7 Applicability in the event of receivership.**

The provisions of this part, or any consent or approval granted hereunder by the FDIC (in its corporate capacity), shall not in any way bind any receiver of a failed insured depository institution. Any consent or approval granted hereunder by the FDIC or any other federal banking agency shall not in any way obligate such agency or receiver to pay any claim or obligation pursuant to any golden parachute, severance, indemnification or other agreement. Claims for employee welfare benefits or other benefits which are contingent, even if otherwise vested, when the FDIC is appointed as receiver for any depository institution, including any contingency for termination of employment, are not provable claims or actual, direct compensatory damage claims against such receiver. Nothing in this part may be construed to permit the payment of salary or any liability or legal expense of any IAP contrary to 12 U.S.C. 1828(k)(3).

By order of the Board of Directors, dated at Washington, D.C., this 21st day of March, 1995.

Federal Deposit Insurance Corporation

**Robert E. Feldman,**

*Acting Executive Secretary.*

[FR Doc. 95–7603 Filed 3–28–95; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 944

**[Docket No. 950222055–5055–01]**

**RIN 0648–AH92**

### Restricting or Prohibiting Attracting Sharks by Chum or Other Means in the Monterey Bay National Marine Sanctuary

**AGENCY:** Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Extension of comment period.

**SUMMARY:** The National Oceanic and Atmospheric Administration's Sanctuaries and Reserves Division (SRD) is considering amending the regulations for the Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) to restrict or prohibit the attracting of sharks by the use of chum or other means in the MBNMS. An advance notice of proposed rulemaking published February 28, 1995 (60 FR 10812) discusses the reasons SRD is considering restricting or prohibiting this activity in the MBNMS. A thirty day comment period was to close on March 30, 1995. This notice extends the comment period by fifteen days.

**DATES:** Comments must be received by April 14, 1995.

**ADDRESSES:** Comments should be sent to Elizabeth Moore, Sanctuaries and Reserves Division, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4 12th Floor, Silver Spring, Maryland, 20910. Comments will be available for public inspection at the same address and at the Monterey Bay National Marine Sanctuary office at 299 Foam Street, Suite D, Monterey, California, 93940.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Moore at (301) 713–3141 or Aaron King at (408) 647–4257 or at mbmns@igc.apc.org.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: March 21, 1995.

**Frank Maloney,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 95–7606 Filed 3–28–95; 8:45 am]

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## INTERNATIONAL TRADE COMMISSION

### 19 CFR Part 210

### Notice of Proposed Rulemaking Concerning Federal Register Notices and Service of Documents on Other Agencies

**AGENCY:** International Trade Commission.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Commission proposes to amend certain final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) to do the following: eliminate the **Federal Register** publication requirement for

certain notices that are not required by law; and reduce the number of documents that are served on other Federal agencies pursuant to section 337(b)(2).

**DATES:** Comments on the proposed amendments to the final rules will be considered if received on or before May 30, 1995.

**ADDRESSES:** A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210 to eventually replace the interim rules currently found in 19 CFR parts 210 and 211.[1] The interim rules in 19 CFR Parts 210 and 211 (1994) apply to all pending investigations and related proceedings that were instituted before September 1, 1994. The final rules, which went into effect on Aug. 31, 1994, and will be codified in 19 CFR Part 210 in 1995, apply to all investigations and related proceedings instituted on or after September 1, 1994.[2]

The interim and final Commission rules governing investigations and related proceedings under section 337 require the Commission to serve various documents on other Federal agencies and to publish a notice in the **Federal Register** when certain events occur. The Commission Inspector General's (IG's) Audit Report No. IG–03–94, *Review of Ways to Increase the Economy and Efficiency of the Process for Conducting Section 337 Investigations* (Aug. 19, 1994), criticized those practices.

The IG recommended that the Commission cease publication of **Federal Register** notices that are not required by law. She suggested that the following factors supported such action: (1) The publication fees are not nominal; (2) significant amounts of staff time and resources are consumed in the preparation of notices for publication; (3) the parties to an investigation are served with copies of all notices issued in the investigation and thus do not have to rely on the **Federal Register**; and (4) interested persons who are not parties can obtain copies of Commission notices from sources other than the **Federal Register**. The Commission agreed that it should cease the publication of some, but not all, **Federal Register** notices that are not required by law.

The IG also recommended that the Commission cease the current practice of routinely serving various section 337 documents on other agencies, which practice was initiated in order to comply with the section 337(b)(2) provision requiring the Commission to consult with and to seek advice and information from other agencies. The IG noted that other agencies rarely commented and often did not review the section 337 documents that were served.

The Commission agreed with the IG's conclusion that the Commission rules should be amended to eliminate the requirement that various documents be served on other agencies and that the Commission's present system of complying with the statutory mandate to consult with such agencies needs improvement.

On behalf of the Commission, the Chairman issued administrative orders implementing the proposed changes by suspending the relevant interim and final rules on an interim basis. See Administrative Orders 95–09 (Mar 1, 1995), 95–10 (Mar. 1, 1995), 95–11 (Mar. 21, 1995), and 95–12 (Mar. 21, 1995).

The Commission also decided to publish proposed amendments to the final rules to eliminate the **Federal Register** publication requirement for some, but not all, notices that are not required by statute. The specific amendments that the Commission is contemplating are discussed below.

## Final Rule 210.7

Final rule 210.7 is currently entitled ''*Service of process and other documents.*'' The Commission proposes to amend that rule by retitling it ''*Service of process and other documents; publication of notices*'' and by adding provisions concerning the publication of **Federal Register** notices. The Commission thought it best to add the new publication provisions to an existing rule rather than creating a new rule, in order to avoid having to renumber the existing rules.

The Commission proposes to amend the text of final rule 210.7 by designating the current text as paragraph (a) of the amended rule and then adding a new paragraph (b) which provides that notices will be published in the **Federal Register** only when such publication is required—

1. By a rule in 19 CFR Chapter II of the Commission's rules of Practice and Procedure (which includes the rules of general application in Part 201 as well as the rules in Part 210); or
2. By order of an ALJ or the Commission (notwithstanding the absence of a rule specifically authorizing publication of the notice in question); or
3. Because an ALJ or the Commission has determined to amend or supplement a previously published notice.

Section 337 notices are available for public inspection in the Office of the Secretary. They will also be made available on WESTLAW and LEXIS. The Commission also is exploring the possibility of making its section 337 notices available on the Internet.

## Final Rule 210.11

Paragraph (a) of final rule 210.11 governs service of documents by the Commission Secretary when the Commission institutes a section 337 investigation. Paragraph (a) currently requires the Secretary to serve nonconfidential copies of the following documents on other Federal agencies:

(1) The complaint; (2) the notice of investigation; and (3) the motion for temporary relief (if any).

The Commission proposes to amend paragraph (a) to eliminate the requirement that copies of the complaint and motion for temporary relief must be served on other agencies. Copies of those submissions will be made available to the other agencies upon request. The amended paragraph (a) will be will designated paragraph (a)(1) of the amended rule 210.11 and will contain no reference to service of documents on other agencies. The Commission proposes to create a new paragraph (a)(2) stating that the Commission will serve copies of the notice of investigation on other Federal agencies.

## Final Rule 210.21

Paragraph (b)(2) of final rule 210.21 discusses the action to be taken when an administrative law judge (ALJ) certifies to the Commission an initial determination (ID) granting a motion for termination of an investigation in whole or part on the basis of a licensing, settlement, or other agreement. The Commission proposes to amend this rule by eliminating the requirement that

[1] See 59 FR 39020, Part II (Aug. 1, 1994) as corrected by 59 FR 64286 (Dec. 14, 1994).

[2] Interim amendments to the final rules were published at 59 FR 67622 (Dec. 30, 1994). Those amendments apply to all section 337 complaints filed on or after January 1, 1995.

a notice soliciting public comments on the ID is to be published in the **Federal Register**. Paragraph (b)(2) will also be amended to provide that if the Commission's final disposition of the ID results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**.

Finally, paragraph (b)(2) will be amended to state that notice of the ID will be given to the other Federal agencies and departments. The cover letter accompanying the notice will:

1. Identify the parties and products involved (to the extent that information does not appear in the notice);
2. Offer to provide the nonconfidential version of the ID upon request; and
3. List an appropriate person to contact for further information.

If the Commission ultimately determines to make its IDs and other section 337 documents available on the Internet, all cover letters also will explain how the ID and other documents can be accessed on the Internet.

Paragraph (c)(2) of final rule 210.21 discusses the final disposition of an ID granting a motion for termination of an investigation in whole or part on the basis of a consent order. Paragraph (c)(2)(i) of that rule will be amended to omit the requirement that copies of an ID are to be served on other Federal agencies. The amended paragraph will provide that notice of the ID will be given to the other agencies. (The notice will be accompanied by a cover letter of the sort described above in connection with notice of an ID granting termination on the basis of a settlement, licensing, or other agreement.)

The Commission proposes to amend paragraph (c)(2)(ii) by eliminating the requirement that notice of the Commission's final disposition of the ID granting a motion for termination on the basis of a consent order is to be published in the **Federal Register**. Instead, the amended rule will state that a notice will be published only if the final disposition of the ID results in termination of the investigation in its entirety. A **Federal Register** notice will not be published if the disposition terminates the investigation only in part (i.e., as to one or more, but not all, respondents).

Paragraph (d) of final rule 210.21 was added by the December 30, 1994, interim amendments to Part 210 to implement the Uruguay Round Agreements Act. Paragraph (d) discusses the final disposition of an ID granting a motion for termination of an investigation in whole or part on the basis of an arbitration agreement. The Commission proposes to amend paragraph (d) by eliminating the requirement that notice of the Commission's final disposition of the ID granting a motion for termination on the basis of an arbitration agreement is to be published in the **Federal Register**. Instead, the amended rule will state that a notice will be published only if the final disposition of the ID results in termination of the investigation in its entirety.

**Final Rule 210.41**

Final rule 210.41, as amended on December 30, 1994, currently states that, except as provided in the rules governing terminations on the basis of a consent order, settlement, licensing, arbitration or other agreement, an order of termination issued by the Commission shall constitute a determination of the Commission. The Commission proposes to further amend final rule 210.41 by adding a sentence stating that the Commission shall publish in the **Federal Register** notice of each Commission order that terminates an investigation in its entirety.

**Final Rule 210.42**

Paragraph (e) of final rule 210.42 indicates that nonconfidential copies of all IDs on matters other than temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (e) to provide that notice of IDs granting motions for termination of an investigation in whole or part on the basis of a consent order or a licensing, settlement, or other agreement—and notice of such other IDs as the Commission may order—will be provided to the customary Federal agencies (in the manner described above in connection with paragraphs (b)(2) and (c)(2)(i) of final rule 210.21 concerning notices of IDs granting termination on the basis of a consent order or a licensing, settlement, or other agreement).

Paragraph (i) of final rule 210.42 currently states that notice of the Commission's decision to review an ID will be published in the **Federal Register**. The Commission proposes to amend that paragraph by deleting the publication requirement and replacing it with a statement that if the Commission's decision terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

**Final Rule 210.43**

Paragraph (d)(3) of final rule 210.43 currently states that notice of the Commission's decision to grant a petition for review of an ID on a matter other than temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (d)(3) to state that such a notice will be served on the other agencies only if the notice also solicits written submissions from interested persons on the issues of remedy, the public interest, and bonding by respondents.

**Final Rule 210.45**

Paragraph (c) of final rule 210.45 currently describes the action that the Commission may take upon review of an ID on a matter other than temporary relief. The Commission proposes to amend paragraph (c) to provide that if the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

**Final Rule 210.66**

Paragraph (d) of final rule 210.66 states that copies of the nonconfidential version of each ID on temporary relief will be served on other Federal agencies. The Commission proposes to amend paragraph (d) to state that notice of the ID will be provided to the other agencies (in the manner described above in connection with final rule 210.21 concerning notice of IDs granting termination on the basis of a consent order or a licensing, settlement, or other agreement).

Paragraph (f) of final rule 210.66 currently states that notice of the Commission's final disposition of a temporary relief ID will be published in the **Federal Register**. The Commission proposes to amend paragraph (f) to state that notice of the determination will be published in the **Federal Register** only if the Commission's disposition of the ID has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. (Section 337(j)(1) requires that a notice be published in those circumstances.)

**Final Rule 210.74**

Paragraph (b) of final rule 210.74 describes the procedure for Commission modification of the reporting requirements of consent orders. The Commission proposes to amend paragraph (b) to provide that notice of any proposed change will be published in the **Federal Register** only if the Commission determines to solicit public comment on the proposed change.

**Final Rule 210.75**

Paragraph (b) of final rule 210.75 describes the Commission action to be taken following receipt of a petition for modification or rescission of a remedial order, a consent order, or another

Commission order. The Commission proposes to amend paragraph (b) by removing the requirement that notice of the institution of such proceedings be published in the **Federal Register**.

If the Commission decides to proceed with this rulemaking after reviewing the comments filed in response to this notice, the proposed rule amendments will be promulgated in accordance with the Administrative Procedure Act (5 U.S.C. 553), and will be codified in 19 CFR part 210. If and when the final rules are amended, the Commission will also revoke appropriate provisions of the interim rules.

**List of Subjects in 19 CFR Part 210**

Administrative practice and procedure, Advisory opinions, Business and industry, Customs duties and inspection, Imports, Investigations.

## PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

**Authority:** 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to revise § 210.7 to read as follows:

### § 210.7 Service of process and other documents; publication of notices.

(a) *Manner of service.* The service of process and all documents issued by or on behalf of the Commission or the administrative law judge—and the service of all documents issued by parties under §§ 210.27 through 210.34 of this part—shall be in accordance with § 201.16 of this chapter, unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(b) *Publication of notices.* (1) Notice of action by the Commission or an administrative law judge will be published in the **Federal Register** only as specifically provided in paragraph (b)(2) of this section, by another section in this chapter, or by order of an administrative law judge or the Commission.

(2) When an administrative law judge or the Commission determines to amend or supplement a notice published in accordance with paragraph (b)(1) of this section, notice of the amendment will be published in the **Federal Register**.

3. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.11 to read as follows:

### § 210.11 Service of complaint and notice of investigation.

(a)(1) Notwithstanding the provisions of § 210.54 requiring service of the complaint by the complainant, the Commission, upon institution of an investigation, shall serve copies of the complaint and the notice of investigation (and any accompanying motion for temporary relief) upon each respondent and the embassy in Washington, DC of the government of each foreign country represented by each respondent. All respondents named after an investigation has been instituted and the governments of the foreign countries they represent shall be served as soon as possible after the respondents are named.

(2) The Commission shall serve copies of the notice of investigation upon the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other agencies and departments as the Commission considers appropriate.

* * * * *

4. For the reasons set forth in the preamble, the Commission proposes to revise paragraphs (b)(2), (c)(2)(i), (c)(2)(ii), and (d) of § 210.21 to read as follows:

### § 210.21 Termination of investigations.

* * * * *

(b) *Termination by settlement.* * * *

(2) The motion and agreement(s) shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the licensing or other agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission simultaneously with the confidential versions of such documents. Notice of the initial determination and the agreement shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**. An order of termination by settlement need not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

(c) *Termination by entry of consent order.* * * *

(2) *Commission disposition of consent order.* (i) If an initial determination granting the motion for termination based on a consent order stipulation is filed with the Commission, notice of the initial determination and the consent order stipulation shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

(ii) The Commission, after considering the effect of the settlement by consent order upon the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, and U.S. consumers, shall dispose of the initial determination according to the procedures of §§ 210.42 through 210.45. If the Commission's final disposition of the initial determination results in termination of the investigation in its entirety, a notice will be published in the **Federal Register**. An order of termination by consent order need not constitute a determination as to violation of section 337. Should the Commission reverse the initial determination, the parties are in no way bound by their proposal in later actions before the Commission.

* * * * *

(d) *Termination based upon arbitration agreement.* Upon filing of a motion for termination with the administrative law judge or the Commission, a section 337 investigation may be terminated as to one or more respondents pursuant to section 337(c) of the Tariff Act of 1930 on the basis of an agreement between complainant and one or more of the respondents to present the matter for arbitration. The motion and a copy of the arbitration agreement shall be certified by the administrative law judge to the Commission with an initial determination if the motion for termination is granted. If the agreement or the initial determination contains confidential business information, copies of the agreement and initial determination with confidential business information deleted shall be certified to the Commission with the confidential versions of such documents. A notice will be published in the **Federal Register** if the Commission's final disposition of the initial determination results in termination of the investigation in its entirety. An order of termination based on an arbitration agreement does not constitute a determination as to violation of section 337 of the Tariff Act of 1930.

* * * * *

5. For the reasons set forth in the preamble, the Commission proposes to revise § 210.41 to read as follows:

**§ 210.41 Termination of investigation.**

Except as provided in § 210.21(b)(2), (c), and (d), an order of termination issued by the Commission shall constitute a determination of the Commission under § 210.45(c). The Commission shall publish in the **Federal Register** notice of each Commission order that terminates an investigation in its entirety.

6. For the reasons set forth in the preamble, the Commission proposes to amend paragraphs (e) and (i) of § 210.42 to read as follows:

**§ 210.42 Initial determinations.**

* * * * *

(e) *Notice to and advice from other departments and agencies.* Notice of each initial determination granting a motion for termination of an investigation in whole or part on the basis of a consent order or a settlement, licensing, or other agreement pursuant to § 210.21 of this part, and notice of such other initial determinations as the Commission may order, shall be provided to the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate. The Commission shall consider comments, limited to issues raised by the record, the initial determination, and the petitions for review, received from such agencies when deciding whether to initiate review or the scope of review. The Commission shall allow such agencies 10 days after the service of an initial determination to submit their comments.

* * * * *

(i) *Notice of determination.* A notice stating the Commission's decision on whether to review an initial determination will be issued by the Secretary and served on the parties. Notice of the Commission's decision will be published in the **Federal Register** if the decision results in termination of the investigation in its entirety.

7. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (d)(3) of § 210.43 to read as follows:

**§ 210.43 Petitions for review of initial determinations on matters other than temporary relief.**

* * * * *

(d) * * *

(3) The Commission shall grant a petition for review and order review of an initial determination or certain issues therein when at least one of the participating Commissioners votes for ordering review. In its notice, the Commission shall establish the scope of the review and the issues that will be considered and make provisions for filing of briefs and oral argument if deemed appropriate by the Commission. If the notice solicits written submissions from interested persons on the issues of remedy, the public interest, and bonding in addition to announcing the Commission's decision to grant a petition for review of the ID, the notice shall be served by the Secretary on all parties, the U.S. Department of Health and Human Services, the U.S. Department of Justice, the Federal Trade Commission, the U.S. Customs Service, and such other departments and agencies as the Commission deems appropriate.

8. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (c) of § 210.45 to read as follows:

**§ 210.45 Review of initial determinations on matters other than temporary relief.**

* * * * *

(c) *Determination on review.* On review, the Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial determination of the administrative law judge. The Commission also may make any findings or conclusions that in its judgment are proper based on the record in the proceeding. If the Commission's determination on review terminates the investigation in its entirety, a notice will be published in the **Federal Register**.

9. For the reasons set forth in the preamble, the Commission proposes to revise paragraphs (d) and (f) of § 210.66 to read as follows:

**§ 210.66 Initial determination concerning temporary relief; Commission action thereon.**

* * * * *

(d) Notice of the initial determination shall be served on the other agencies listed in § 210.50(a)(2). Those agencies will be given 10 calendar days from the date of service of the notice to file comments on the initial determination.

* * * * *

(f) If the Commission determines to modify, reverse, or set aside the initial determination, the Commission will issue a notice and, if appropriate, a Commission opinion. If the Commission does not modify, reverse, or set aside the administrative law judge's initial determination within the time provided under paragraph (b) of this section, the initial determination will automatically become the determination of the Commission. Notice of the Commission's determination concerning the initial determination will be issued on the statutory deadline for determining whether to grant temporary relief, or as soon as possible thereafter, and will be served on the parties. Notice of the determination will be published in the **Federal Register** if the Commission's disposition of the ID has resulted in a determination that there is reason to believe that section 337 has been violated and a temporary remedial order is to be issued. If the Commission determines (either by reversing or modifying the administrative law judge's initial determination, or by adopting the initial determination) that the complainant must post a bond as a prerequisite to the issuance of temporary relief, the Commission may issue a supplemental notice setting forth conditions for the bond if any (in addition to those outlined in the initial determination) and the deadline for filing the bond with the Commission.

10. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (b) of § 210.74 to read as follows:

**§ 210.74 Modification of reporting requirements.**

* * * * *

(b) *Consent orders.* Consistent with the standards set forth in paragraph (a) of this section, the Commission may modify reporting requirements of consent orders. The Commission shall serve notice of any proposed change, together with the reporting requirements to be modified and the reasons therefor, on each party subject to the consent order. Such parties shall be given the opportunity to submit briefs to the Commission, and the Commission may hold a hearing on the matter. Notice of any proposed change in the reporting requirements will be published in the **Federal Register** if the Commission determines to solicit public comment on the proposed change.

11. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (b)(1) of § 210.75 to read as follows:

**§ 210.75 Proceedings to enforce exclusion orders, cease and desist orders, consent orders, and other Commission orders.**

* * * * *

(b) *Formal enforcement proceedings.* (1) The Commission may institute an enforcement proceeding at the Commission level upon the filing of a

complaint by the complainant in the original investigation or his successor in interest, by the Office of Unfair Import Investigations, or by the Commission setting forth alleged violations of any exclusion order, cease and desist order, or consent order. If a proceeding is instituted, the complaint shall be served upon the alleged violator. Within 15 days after the date of service of such a complaint, the named respondent shall file a response to it. Responses shall fully advise the Commission as to the nature of any defense and shall admit or deny each allegation of the complaint specifically and in detail unless the respondent is without knowledge, in which case its answer shall so state and the statement shall operate as a denial. Allegations of fact not denied or controverted may be deemed admitted. Matters alleged as affirmative defenses shall be separately stated and numbered.

* * * * *

Issued: March 22, 1995.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–7567 Filed 3–28–95; 8:45 am]

BILLING CODE 7020–02–P

## 19 CFR Part 210

## Filing of Complaints Alleging Unfair Practices in Import Trade

**AGENCY:** International Trade Commission.

**ACTION:** Proposed rulemaking and request for comments.

**SUMMARY:** The Commission proposes to amend the Commission's final rules for investigations and related proceedings under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The proposed amendments require section 337 complainants to file equal numbers of confidential and nonconfidential copies of complaints and to file them on the same date.

**DATES:** Comments on the proposed amendments will be considered by the Commission if received on or before April 28, 1995.

**ADDRESSES:** A signed original and 18 copies of each set of comments, along with a cover letter stating the nature of the commenter's interest in the proposed rulemaking, should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** P.N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. Hearing-impaired individuals can obtain information concerning the proposed rulemaking by contacting the Commission's TDD terminal at 202–205–1810.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 1, 1994, the Commission published final rules for 19 CFR part 210.[1] The current 10-day deadline under final rule 210.4(f)(3)(i) for section 337 complainants to file nonconfidential copies of their complaints after the confidential version is filed has generated concern on the part of law firms and their clients (or potential clients) that become aware that a section 337 complaint has been filed (presumably via the Commission's petition and complaint line recording) but are not able to examine immediately a nonconfidential version of the complaint. The Commission now believes that there is no reason to apply a 10-day delay to the filing of nonconfidential copies of complaints, since section 337 complainants normally have ample time to prepare a public version of their complaint and should be able to file that version simultaneously with the confidential version. The Commission thus proposes to amend the final rules to require section 337 complainants to file equal numbers of confidential and nonconfidential copies of complaints and to file them on the same date.

The proposed rule amendments set forth in this notice are intended to streamline administrative process by improving the speed and efficiency of the Commission's distribution and service of nonconfidential copies of complaints. The Commission believes that the proposed rule changes, if promulgated, will achieve those objectives by doing the following:

1. Eliminating the need for the Dockets Branch of the Office of the Secretary to make copies of the nonconfidential version of each complaint in order to perform the required distribution and service of nonconfidential copies of the complaint;

2. Facilitating the ability of the Dockets Branch to promptly distribute nonconfidential copies of complaints to interested persons and the Commission immediately after the complaint is filed; and

3. Facilitating the ability of the Dockets Branch to promptly serve nonconfidential copies of each complaint on the respondents and the appropriate embassies immediately after the Commission votes to institute an investigation in response to the complaint.

The public comments filed in response to this notice will aid the Commission in determining whether the proposed rule amendments will achieve the desired streamlining objectives.

### Section-by-Section Analysis of the Proposed Amendments

In order to effectuate the proposed rule changes concerning the filing of nonconfidential copies of complaints, the Commission proposes to amend final rules 210.4, 210.5, 210.8, and 210.52 in the manner described below.

### Subpart A—Rules of General Applicability

*Final Rule 210.4*

Paragraph (f)(3) of final rule 210.4 currently requires section 337 complainants to file nonconfidential copies of their complaints 10 days after the confidential version is filed. The Commission proposes to amend paragraph (f)(3) to require complainants to file nonconfidential copies of their complaints concurrently with the confidential copies.

*Final Rule 210.5*

Paragraph (a) of final rule 210.5 currently states that, unless the Commission or an administrative law judge (ALJ) orders otherwise, confidential business information shall be submitted in accordance with 19 CFR 201.6(c), which requires that business information for which the supplier desires confidential treatment must be clearly labelled ''confidential business information'' when submitted and must be segregated from other material being submitted.

The Commission proposes to amend paragraph (a) of final rule 210.5 to provide that confidential business information shall be submitted in accordance with 19 CFR 201.6(b) (instead of 19 CFR 201.6(c)), since 19 CFR 201.6(b) outlines the procedure for submitting business information in confidence. Paragraph (a) of final rule 210.5 also will be amended to provide that in the case of a complaint and a motion for temporary relief, the requisite number of nonconfidential copies is prescribed by final rule 210.8(a) (and not by 19 CFR 201.8(d)).[2]

[1] *See* 59 FR 39020, Part II (Aug. 1, 1994), as corrected by 59 FR 64286 (Dec. 14, 1994) and amended by 59 FR 67622 (Dec. 30, 1994).

[2] Section 201.6(b)(3)(v) of 19 CFR requires the filing of a nonconfidential copy of the document for which confidential treatment is being sought, as required in 19 CFR 201.8(d). Section 201.8(d) of 19 CFR requires the filing of ''at least four'' nonconfidential copies.

*Final Rule 210.8*

Paragraph (a) of final rule 210.8 discusses the number of copies of the complaint and any motion for temporary relief which each complainant must file with the Commission. The Commission proposes to amend paragraph (a) to require the complainant to file enough nonconfidential copies for use by the Commission and its staff, service by the Commission on each proposed respondent, and service by the Commission on the government of the country of each foreign respondent.

**Subpart H—Temporary Relief**

*Final Rule 210.52*

Paragraph (e) of final rule 210.52 identifies the rules to be followed if a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in 19 CFR 201.6(a). The Commission proposes to amend paragraph (e) of final rule 210.52 to include references to final rules 210.4(a) and 210.8(a) (which the Commission also proposes to amend).

## PART 210—ADJUDICATIVE PROCEDURES

1. The authority citation for part 210 will continue to read as follows:

**Authority:** 19 U.S.C. 1333, 1335, and 1337.

2. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (f)(3) of § 210.4 to read as follows:

**§ 210.4 Written submissions; representations; sanctions.**

* * * * *

(f) *Specifications; filing of documents.*

* * *

(3) (i) If a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a) of this part.

(ii) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(A) A supplement to a complaint and all exhibits thereto;

(B) A response to a complaint and all supplements and exhibits thereto;

(C) All submissions relating to a motion to amend the complaint or notice of investigation; and

(D) All submissions addressed to the Commission.

Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

3. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.5 to read as follows:

**§ 210.5 Confidential business information.**

(a) *Definition and submission.* Confidential business information shall be defined and identified in accordance with § 201.6(a) and (c) of this chapter. Unless the Commission, the administrative law judge, or another section of this part states otherwise, confidential business information shall be submitted in accordance with § 201.6(b) of this chapter. In the case of a complaint and a motion for temporary relief filed under this part, the number of nonconfidential copies shall be prescribed by § 210.8(a) of this part.

* * * * *

4. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (a) of § 210.8 to read as follows:

**§ 210.8 Commencement of preinstitution proceedings.**

(a) *Upon receipt of complaint.* A preinstitution proceeding is commenced by filing with the Secretary a signed original complaint and the requisite number of true copies. The complainant shall file 14 confidential copies of the complaint, 14 nonconfidential copies, plus one confidential copy and one nonconfidential copy for each person named in the complaint as violating section 337 of the Tariff Act of 1930, and one nonconfidential copy for the government of each foreign country of any person or persons so named. If the complainant is seeking temporary relief, the complainant must file 14 confidential copies of the motion, 14 nonconfidential copies, plus one additional confidential copy and one additional nonconfidential copy of the motion for such relief for each proposed respondent, and one nonconfidential copy for the government of the foreign country of the proposed respondent. The additional copies of the complaint and motion for temporary relief for each proposed respondent and the appropriate foreign government are to be provided notwithstanding the procedures applicable to a motion for temporary relief, which require service of the complaint and motion for temporary relief by the complainant.

* * * * *

5. For the reasons set forth in the preamble, the Commission proposes to revise paragraph (e) of § 210.52 to read as follows:

**§ 210.52 Motions for temporary relief.**

* * * * *

(e) If the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant must follow the procedure outlined in §§ 210.4(a), 210.5(a), 201.6(a) and (c), 210.8(a), and 210.55 of this part.

Issued: March 23, 1995.

By Order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–7648 Filed 3–28–95; 8:45 am]

**BILLING CODE 7020–02–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Chapter I

**[FRL–5174–3]**

## National Emission Standards for Hazardous Air Pollutants Streamlined Development: Announcement and Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement and Request for comments.

**SUMMARY:** Section 112(d) of the Clean Air Act (CAA) directs EPA to reduce emissions of hazardous air pollutants (HAPs) by requiring new and existing sources to achieve an emissions standard attainable by the maximum achievable control technology (MACT). The HAPs regulated under Section 112 have been characterized as carcinogenic, mutagenic, bioaccumulative, and causing other adverse health and environmental effects. MACT standards are intended to significantly reduce these effects.

This notice announces and requests comments on EPA's plan to use a streamlined approach to promulgating MACT standards, termed MACT Partnerships. Section 112(e) requires EPA to promulgate, on a strict schedule, MACT standards for the more than 150 source categories of HAPs listed pursuant to Section 112(c)(1). This large number of MACT standards can not be addressed by the traditional approach to standards development. The MACT Partnerships approach is designed to expedite the regulatory development process and provide information for case-by-case emission limitation determinations as required by Section 112(g) and 112(j) of the CAA. The MACT Partnerships approach is founded on the mutual interests of all the major stakeholders, including EPA, States and local agencies, industry, and environmental organizations. This notice also announces the availability on the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards, of an initial list of MACT standards being handled under MACT Partnerships.

**DATES:** *Comments:* Comments must be received on or before May 15, 1995.

**ADDRESSES:** *Comments:* Comments should be submitted (in duplicate or as a WP5.1 file, if possible) to: Policy, Planning, and Standards Group; Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5623.

*TTN:* 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 bps modem. If more information on TTN is needed, call the HELP line at (919) 541–5384.

**FOR FURTHER INFORMATION CONTACT:** For general information concerning this notice, contact Albert H. Wehe at (919) 541–5623; Policy, Planning and Standards Group; Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Pursuant to Section 112(c) and 112(e) of the CAA, EPA published two **Federal Register** notices laying out the source categories of HAPs regulated under Section 112(d) of the Clean Air Act. In the first **Federal Register** notice (57 FR 31578, July 16, 1992), EPA published the source categories of HAPs as required under Section 112(c). In the second **Federal Register** notice (58 FR 83941, December 3, 1993), EPA presented the list in a regulatory schedule as required by Section 112(e). In addition to requiring the regulatory schedule, Section 112(e) requires EPA to develop MACT standards under Section 112(d) according to this regulatory schedule.

There are consequences if EPA fails to set the MACT standards on time. Thirty-nine MACT standards were targeted for promulgation by November 1994, forty-three more by Nov 1997, and an additional eighty-seven by Nov 2000. Section 112(j) of the CAA requires the States to establish emission limitations, using a case-by-case determination of what the Federal standard would have been if EPA fails to promulgate Federal standards.

Case-by-case MACT determinations under 112(j) will require substantial information and resources from State and local agencies, industry, and environmental groups. Individually, State and local agencies, industry and environmental groups have expressed their interest in avoiding a significant number of case-by-case MACT determinations. Accordingly, there appears to be a strong incentive for EPA, State and local agencies, industry and environmental groups to work together to enable EPA to promulgate the standards on schedule and to gather information for 112(j) case-by-case MACT determinations.

## II. Current Situation

The EPA is currently behind schedule on a number of MACT standards due in November 1994 and potentially behind schedule on a number of MACT standards due in November 1997. The EPA has promulgated about one-half of the MACT standards due in November 1994. The EPA is already under court-ordered schedules to complete many of the remaining MACT standards due in November 1994. These schedules will ensure that standards are promulgated before case-by-case MACT determinations would be required by Section 112(j). The EPA has recently been served notice by an environmental group indicating the group plans to file a petition to compel EPA to promulgate the few standards due in November 1994 that are not done nor on an existing court-ordered schedule.

In 1994, EPA had to postpone work on several of the MACT standards due in November 1997 and November 2000 (the 7-year and 10-year MACT standards) as a result of resource constraints. The EPA had to do so in part to ensure that adequate resources were available for the court-ordered MACT standards. These resource constraints have put EPA behind on completing the 7-year and 10-year MACT standards.

The amount of work (and therefore resources) needed to complete the 7-year and 10-year MACT standards on time is difficult to predict. Nevertheless, given the EPA's experience of the MACT standards completed to date, EPA believes that the amount of work can be significantly reduced by streamlining and re-engineering the way these standards are developed. This work helps EPA appropriately subcategorize source categories, define the MACT floor (see Section 112(d)), address emissions of special HAPs (e.g., Great Waters and urban air toxics), and evaluate potential regulatory options beyond the MACT floor.

Resources have been traditionally used by EPA to gather and analyze essentially all the data and information necessary to reach the regulatory decisions associated with standards such as MACT standards. Many of the 7-year and 10-year MACT standards had not been studied by EPA prior to recent years. Traditionally, EPA has found that it takes about 4 years to develop national technology-based standards such as MACT standards. Accordingly, to complete the 7-year MACT standards by November 1997, EPA had to begin in earnest to work on these standards early in 1994. Thus, to complete the 7-year MACT standards on time, EPA needs to reduce the amount of work and time associated with these standards.

In order to meet both the 7-year and 10-year deadlines, EPA has concluded that it must develop new approaches to streamline the standard setting process and to leverage its limited resources. To that end, EPA is currently initiating a new process for developing MACT standards that involves a partnership with states, industry, and environmental organizations. This partnership, called MACT Partnerships, is founded on the

mutual interests of all the major stakeholders in the air toxics program.

For many source categories for which MACT standards are required, State and local agency personnel have the expertise, information and desire to provide technical assistance for the development of MACT standards. Industry personnel are also invaluable sources of technical expertise and data needed to develop MACT standards. In addition, environmental groups have a thorough understanding of the interests of the public and can assist in the development of as many MACT standards as practical.

### III. Streamlined MACT Development Approach

The MACT Partnerships program, as currently envisioned, involves two phases for each MACT standard. The first phase involves development of a ''presumptive MACT''. A ''presumptive MACT'' is not an emission standard; but it serves as a statement of current knowledge of maximum available control technologies and a basis for a decision on how to develop the emission standard for the source category involved. The second phase is the formal standard development process, which results in a promulgated MACT standard for the source category.

In the first phase of the MACT Partnerships program, the development of a ''presumptive MACT'', begins with two main steps: (1) A meeting between EPA and State and local agencies, known as the presumptive MACT meeting and (2) consultations with industry, environmental and other interest groups. In the presumptive-MACT meeting, EPA, and States review available information to estimate what MACT would be if only this information were used in the determination. This draft presumptive MACT then goes through a consultation stage where industry and environmental groups are invited to comment on the selected presumptive MACT. After this consultation, EPA and the State/local agencies determine a final presumptive MACT and how best to complete the development of a standard, with the normal opportunities for public comment. This determination of a presumptive MACT and a decision on how to complete development of a standard are the two products of the first phase.

For the second phase of MACT Partnerships, EPA envisions the use of one of three basic regulatory development paths: Adopt-a-MACT, share-a-MACT, or a streamlined-traditional approach. In all cases, EPA would eventually propose and then promulgate the MACT standard. The ''Adopt-a-MACT'' path allows EPA to enter into an agreement with a State wherein the State would accept primary responsibility for data collection and analysis. Alternatively, a ''share-a-MACT'' path allows states, industry or both to share with EPA the responsibility for developing the underlying data and analysis from which EPA would determine the MACT emission limitation. When no suitable partners can be found, a ''streamlined-traditional'' path is the last alternative. In the ''streamlined-traditional'' path, EPA would go through a streamlined process of the traditional rule development, with a presumptive MACT specification as an intermediate stage. No matter what path is chosen, almost all standards would go through phase one, namely, the presumptive MACT meeting and the second consultative stage.

The EPA has successfully worked with States and industry in the development of presumptive MACT in two pilot projects. One project concerned the MACT standard primary aluminum manufacturing. The States of Washington and New York worked with EPA in the development of a presumptive MACT. In addition, the Aluminum Manufacturers Association and its member companies participated. For the second project, EPA worked with the States of Wisconsin and Maryland to develop a presumptive MACT for bakers yeast manufacturing. Both EPA and State partners have worked with the industry to move from the presumptive MACT to develop a MACT standard that is scheduled to be proposed in the fall of 1995.

Currently, EPA is beginning more than 25 projects within the MACT Partnerships program. Presumptive MACT meetings are scheduled over the next several months. For the information of the public, EPA has developed a table of these projects and has added it to the Technology Transfer Network bulletin board system (TTN BBS) See **ADDRESSES** section above for information on how to access the TTN BBS. The list can be found under the Clean Air Act (Rules/Guidance/Policy) section, Tittle III: Hazardous Air Pollutants subsection and then the Status of Rules/Projects portion of the TTN BBS.

In summary, the MACT Partnerships program is one way to pursue new, assertive ways to develop MACT standards. MACT Partnerships is characterized by EPA and State/localities working together with industry and environmentalists to fulfill the mandate to set MACT standards for sources of hazardous air pollutants. Given the mutual interest of all the stakeholders and EPA's current ''budgetary'' situation within the air toxics program, EPA has begun redefining its role in selected areas of MACT standard development for many MACT standards as a coordinator and facilitator.

### IV. Request for Comments

With this notice the EPA is requesting comments on:

(1) The concept of MACT Partnerships as an approach for streamlining the development of MACT standards,

(2) How to improve the MACT Partnership approach,

(3) Alternative ways to streamline the MACT development process, and

(4) Using presumptive MACT as a starting point for case-by-case MACT determinations.

### V. Administrative Requirement

*A. Paperwork Reduction Act*

The request for comments detailed in this notice seeks voluntary responses and does not affect information collection burdens.

*B. Executive Order 12866 Review*

This notice is a request for comments and, therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866. It was not considered significant.

Dated: March 14, 1995.

**Mary D. Nichols,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 95–7492 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–P**

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**40 CFR Part 63**

**[AD-FRL–5175–9]**

**RIN 2060–AE37**

## National Emission Standards for Hazardous Air Pollutant Emissions From the Production of Acrylonitrile Butadiene Styrene (ABS) Resin, Styrene Acrylonitrile (SAN) Resin, Methyl Methacrylate Acrylonitrile Butadiene Styrene (MABS) Resin, Methyl Methacrylate Butadiene Styrene (MBS) Resin, Polystyrene Resin, Poly (Ethylene Terephthalate) (PET) Resin, and Nitrile Resin (Group IV Polymers and Resins)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The proposed rule would reduce emissions of organic hazardous air pollutants (HAP) from existing and new facilities that manufacture one or more of the following Group IV polymers and resins: Acrylonitrile butadiene styrene (ABS) resin, styrene acrylonitrile (SAN) resin, methyl methacrylate acrylonitrile butadiene styrene (MABS) resin, methyl methacrylate butadiene styrene (MBS) resin, polystyrene resin, poly (ethylene terephthalate) (PET) resin, and nitrile resin. The EPA is in the process of developing standards for a wide range of types of polymer and resin production facilities. The polymers and resins covered by this proposed rule are thermoplastics, and with two exceptions, use styrene as the dominant feedstock. These thermoplastics are basically intermediate products used to produce automotive plastic parts, appliances and appliance parts, housewares, polyester fibers, packing and containers, soft drink bottles, and toys. In the production of thermoplastics, a variety of organic HAP are used as monomers or are created as by-products. The organic HAP emitted by the facilities covered by this proposed rule include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The proposed rule is estimated to reduce organic HAP emissions from existing facilities by 11,750 megagrams per year (Mg/yr). The emission reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act (Act) as amended in 1990, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population''.

The proposed rule implements section 112(d) of the Act, which requires the Administrator or Administrator's designee, hereafter referred to as Administrator, to regulate emissions of HAP listed in section 112(b) of the Act. The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of organic HAP from new and existing major sources, taking into consideration the cost of achieving such emission reduction, and any non-air quality, health and environmental impacts, and energy requirements.

Under today's action, the EPA is also proposing to revise subpart DDD of 40 CFR part 60 by removing all references to polystyrene and PET facilities contained therein. This proposed action is being taken because today's proposed rule would supersede the requirements specified in subpart DDD of 40 CFR part 60 for polystyrene and PET facilities.

Finally, under today's action, the EPA is proposing to add nitrile resin production to the source category list under section 112(c) of the Act and to the source category schedule under section 112(e) of the Act with a promulgation date no later than November 15, 2000.

**DATES:** *Comments.* Comments must be received on or before May 30, 1995.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by April 19, 1995, a public hearing will be held on April 28, 1995 beginning at 10 a.m. Persons interested in attending the hearing should call Ms. Marguerite Thweatt at (919) 541–5607 to verify that a hearing will be held.

*Request to Speak at Hearing.* Persons wishing to present oral testimony must contact the EPA by April 19, 1995 by contacting Ms. Marguerite Thweatt; Organic Chemicals Group, (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5607.

**ADDRESSES:** *Comments.* Comments should be submitted (in duplicate, if possible) to: Air Docket Section (LE–131), Attention: Docket No. A–92–45, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. The public hearing, if required, will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina.

The docket is located at the above address in room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday; telephone number (202) 382–7548. A reasonable fee may be charged for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed rule, contact Mr. Leslie Evans at (919) 541–5410, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The proposed regulatory text is not included in this **Federal Register** document, but is available in Docket No. A–92–45, on the Technology Transfer Network (TTN), or from the EPA contact person designated in this notice. The TTN, EPA's electronic bulletin board, provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a telephone call. Dial (919) 541–5742 for up to a 14,400 bps modem. If more information on the TTN is needed, call the HELP line at (919) 541–5384.

In addition to the proposed regulatory text, the Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket (Docket No. A–92–45, Category II–A), and on the TTN. This document is entitled Hazardous Air Pollutant Emissions From Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Proposed Standards, March 1995, and has been assigned document number EPA–453/R–95–004a.

Other materials related to this rulemaking, including technical memoranda, are available for review in the docket. Some of these memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A–92–45, Category II–A) and from the EPA Library by calling (919) 541–2777. The document is entitled Hazardous Air Pollutant Emissions From Process Units in the Thermoplastics Manufacturing Industry—Supplementary Information Document for Proposed Standards, March 1995, and has been assigned document number EPA–453/R–95–003a.

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## I. List of Affected Source Categories

Section 112 of the Act requires that the EPA evaluate and control emissions of HAP. The control of HAP is achieved through promulgation of emission standards under sections 112(d) and 112(f) of the Act and work practice and equipment standards under section 112(h) of the Act for categories of sources that emit HAP. On July 16, 1992, the EPA published an initial list of major and area source categories to be regulated, as required under section 112(c) of the Act. Included on that list were major sources emitting HAP from ABS, SAN, MABS, MBS, polystyrene, and PET. Nitrile resin production is being added to the source category list under section 112(c) of the Act because, based on information obtained during the gathering of HAP emission data for this proposed rule, the one facility identified as producing nitrile resins was determined to be a major source. Further, the EPA decided to include nitrile resin production under today's proposed rule because of similarities in process operations, emission characteristics, and control device applicability and costs with the various styrene-based resin source categories. For the purpose of this notice, these seven polymer and resin source categories are collectively referred to as the Group IV polymers and resins or the Group IV thermoplastics.

The EPA identified a total of 66 facilities producing one or more of the Group IV thermoplastics. Twenty facilities were identified that produced thermoplastics using multiple processes and, thus, fall within multiple subcategories. For example, six of the PET facilities use both the continuous terephthalic acid (TPA) process and the continuous dimethyl terephthalate (DMT) process.

All of the facilities considered in the analysis supporting today's proposed rule are believed to be major sources according to the 1990 Amendments criterion of emitting or of having the potential to emit 10 tons per year (tons/yr) of any one HAP or 25 tons/yr of combined HAP. (A year, for the purposes of compliance with this rule, is any consecutive twelve month period or 365 rolling days). The proposed rule would apply to all major sources that produce any of the seven thermoplastics identified in this notice. Area sources would not be subject to this proposed rule.

In developing the background information to support the proposed rule, the EPA chose to subcategorize four of the seven source categories for purposes of analyzing the maximum achievable control technology (MACT) floors and developing regulatory alternatives. A source category was subcategorized to account for major differences in production methods, raw material usage, or both. Table 1 summarizes the subcategories developed.

TABLE 1.—SUBCATEGORIZATION OF GROUP IV POLYMERS AND RESINS[a]

| Source category | Subcategory | Number of facilities in subcategory[b] |
|---|---|---|
| ABS | Continuous mass | 5 |
| | Continuous emulsion | 2 |
| | Batch emulsion | 4 |
| | Batch suspension | 2 |
| | Batch latex | 1 |
| SAN | Continuous | 3 |
| | Batch | 2 |
| | ASA/AMSAN | 1 |
| Polystyrene | Continuous | 22 |
| | Batch | 11 |
| | EPS | 7 |
| PET | TPA, continuous | 12 |
| | TPA, batch | 1 |
| | DMT, continuous | 10 |
| | DMT, batch | 10 |

[a] As discussed in the text, subcategorization was not needed for MABS, MBS, and nitrile facilities. Thus, these source categories are not shown in this table.

[b] Number of facilities include one or more process units of each described subcategory. Some facilities use more than one type of production method or raw material (process). Therefore, it is incorrect to sum these numbers to calculate the total number of facilities within a source category.

ASA=acrylonitrile styrene acrylate.
AMSAN=alpha methyl styrene acrylonitrile.
EPS=expandable polystyrene.
TPA=terephthalic acid.
DMT=dimethyl terephthalate.

No subcategorization was found to be justified for the three facilities producing MBS. Only one facility was found to produce MABS and only one to produce nitrile resins. Hereafter, for purposes of this preamble and the proposed standards, the terms ''subcategory'' and ''subcategories'' include the production of MBS, MABS, and nitrile even though these are source categories.

Upon inspection (see Section IV, Summary of Proposed Standards), it may appear that subcategorization does not affect the outcome of the proposed standards since the same level of control is required across most of the subcategories for a given type of emission point (e.g., storage vessel, process vent, etc.). In fact, subcategorization does affect the proposed level of control for individual types of emission points. As the development of the proposed standards

progressed beyond the technical analyses and the structure of the regulation was examined, the EPA considered different options that would create fewer subcategories for defining the source categories.

In previous rules, the EPA considered by-products, co-products, and intermediates to be products of a process. In the implementation of these previous rules, there has been confusion over the meaning of the terms ''product'' and ''to produce'' and the correct way to decide whether a source ''produces'' a listed chemical and is subject to the standard.

This confusion arises because of the complexity, diversity, and the highly integrated nature of the subject industries.

Because of this confusion, applicability will be based on the primary product that is produced by a thermoplastic product process unit. By-products, co-products, and isolated intermediates would not be considered in determining applicability. For the purposes of this rule, the EPA does not consider wastes to be products. Also, impurities or trace contaminants that are coincidentally processed and are not isolated are not considered to be a product.

The primary product of the thermoplastic product process unit is determined only once, and the determination would be based on the product that represents the largest percentage of the total mass produced by the thermoplastic product process unit.

## II. Background

### *A. Summary of Considerations Made in Developing This Rule*

The Act was created, in part, ''to protect and enhance the quality of the Nation's air resources so as to promote public health and welfare and the productive capacity of its population'' (section 101(b)(1) of the Act). As such, this regulation protects the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the Act.

The HAP listed in section 112(b)(1) of the Act emitted by the thermoplastic facilities covered by this proposed rule include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Some of these pollutants are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; liver and kidney toxicity, and neurotoxicity. These effects can range from mild to severe. In extreme circumstances, death can result from exposure. These adverse health effects are associated with a wide range of ambient concentrations and exposure times and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. Health impacts are also dependent on multiple factors that affect human variability such as genetics, age, health status (e.g., presence of pre-existing disease) and lifestyle. Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit in land or water and cause subsequent adverse human health or ecosystem effects.

The EPA does not have the type of current detailed data on each of the thermoplastic facilities covered by this rule, and the people living around the facilities, that would be necessary to conduct an analysis to determine the actual population exposures to the organic HAP emitted from these facilities and resulting health effects. Therefore, the EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, the promulgated standard will substantially reduce emissions and exposures to the level achievable with maximum achievable control technology.

The alternatives considered in the development of this regulation, including those alternatives selected as standards for new and existing sources, are based on process and emissions data received from the existing facilities known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor were selected when they were judged to be reasonable ''taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements'' (Section 112(d)(2) of the Act). In most instances, the proposed standards reflect regulatory alternatives that are judged to be reasonable and are equivalent to or more stringent than the MACT floor. In a few instances, the MACT floor was found to have a relatively high cost. In these cases, the MACT floor was chosen because a less costly, yet otherwise reasonable, regulatory alternative was not available.

The proposed standards give existing facilities 3 years from the date of promulgation to comply. This is the maximum amount allowed by the Act. Based on the number of existing sources affected by this rule, the EPA believes that required retrofits or other actions can be achieved in the timeframe allotted. New facilities are required to comply with the standard upon start-up. The EPA sees no reason why new facilities would not be able to comply with the requirements of the standards upon start-up.

Included in the proposed rule are methods for determining initial compliance as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that affected sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule. This rule refers extensively to the HON (40 CFR part 63, subparts F, G, and H). In doing so, this rule has benefited from the extensive public debate and participation experienced in the HON rulemaking. The EPA has also attempted to maintain consistency with existing regulations by either incorporating text from existing regulations or referencing the applicable sections, depending on which method would be least confusing for a given situation.

Representatives from other interested EPA offices and programs, including State and Regional environmental agency personnel, participated in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and is given opportunities to review and comment on the regulation before proposal and promulgation. Therefore, the EPA believes that the implication to other EPA offices and programs has been adequately considered during the development of these standards. In addition, the EPA has met with some members of industry concerning these standards. Finally, industry, regulatory authorities, and environmental groups will have the opportunity to comment on the proposed standards and provide additional information during the public comment period following proposal.

These standards will result in an organic HAP emission reduction of 11,750 Mg/yr for existing facilities and 7,395 Mg/yr for new sources. The emission reductions achieved by these standards, when combined with the emission reductions achieved by other standards mandated by the Act, will achieve the primary goal of the Clean Air Act, which is to ''enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.''

*B. Regulatory Background*

In 1990 (55 FR 51010, December 11, 1990), the EPA promulgated new source performance standards (NSPS) affecting four types of polymer manufacturing facilities (subpart DDD of 40 CFR part 60). Two of these four types—polystyrene and PET—are being affected by today's proposed rule. In addition, polystyrene manufacturing facilities may be subject to State regulations as the result of a control techniques guideline (CTG) document (EPA–450/3–83–008, November 1983; Docket No. A–92–45, Category II-A) addressing, in part, polystyrene manufacturing.

For polystyrene, subpart DDD applies to those facilities that use a continuous process to manufacture general purpose or high impact polystyrene. Facilities that produce general purpose or high impact polystyrene using a batch process were not covered under subpart DDD because information at that time indicated that no new facilities would be constructed using batch processes to produce general purpose or high impact polystyrene. Subpart DDD also applies to all facilities that manufacture expandable polystyrene (EPS), regardless of the process used.

For general purpose or high impact polystyrene facilities using a continuous process and all facilities producing EPS, subpart DDD requires control of continuous process volatile organic compound (VOC) emissions from each material recovery section. The standard for material recovery section process emissions is: (1) Limit the emissions of total organic compounds (TOC) (minus methane and ethane) to 0.0036 kilograms (kg) of TOC per megagram (Mg) of product (0.0036 pounds (lbs) TOC/1,000 lbs of product) from each material recovery section, (2) limit the outlet gas temperature from each final condenser in each material recovery section to −25 degrees Celcius (−25° C) (−13° Fahrenheit (−13° F)), or (3) reduce emissions from each material recovery section by 98 weight percent or to 20 parts per million by volume (ppmv). Modified or reconstructed affected facilities with uncontrolled emission rates at or below 0.05 kg TOC per Mg of product were exempted from this part of subpart DDD.

Like subpart DDD, the CTG applies to material recovery section continuous process emissions at polystyrene facilities using a continuous process. The CTG's recommended emission limit is 0.12 kg TOC/Mg of product.

Subpart DDD also requires control of VOC emissions from equipment leaks from polystyrene facilities using a continuous process and from all EPS facilities. With one exception, subpart DDD's standards for equipment leaks are the same as those for synthetic organic chemical manufacturing industry (SOCMI) facilities under subpart VV of 40 CFR part 60. The one exception concerns polymer pumps that are designed with a ''bleed port.'' Such pumps are exempted from the definition of a ''visible leak of fluid,'' but the exemption expires when the existing pump is replaced or reconstructed.

As mentioned previously, subpart DDD also applies to PET facilities that use either a DMT or TPA continuous process. Subpart DDD does not apply to PET facilities that use a batch process because the EPA did not expect any new PET facilities to be constructed using a batch process. For PET facilities using a continuous process, subpart DDD only requires control of selected process emissions. Standards were not proposed or promulgated for equipment leak emissions at PET facilities because available information at that time showed that equipment leak components at facilities using the continuous TPA process were in heavy liquid service and that continuous DMT facilities were already covered by the SOCMI equipment leak standards (subpart VV of 40 CFR part 60).

Table 2 summarizes subpart DDD requirements for process emissions for new, modified, or reconstructed PET facilities. For both DMT and TPA continuous facilities, subpart DDD limits ethylene glycol emissions from the polymerization reaction section by requiring compliance with an emission rate limit (0.02 kg TOC/Mg of product) and an ethylene glycol weight percent concentration limit (either 0.35 or 6.0 percent depending on the type of process) for the cooling water in the cooling tower. In addition, subpart DDD limits process emissions from the material recovery section at continuous DMT facilities and from the raw material preparation section at continuous TPA facilities.

TABLE 2.—SUMMARY OF NSPS PET STANDARDS

| Process | Affected facility | Viscosity | Number of end finishers | Type of vacuum producer | Standard |
|---|---|---|---|---|---|
| DMT | Material Recovery. | Low | | | 0.018 kg TOC/Mg of product *OR* limit temperature to +37 °F from each final condenser in the material recovery section. |
| | | High | Single | | (same as above). |
| | | | Multiple | | (same as above). |
| DMT | Polymerization Reaction. | Low | | Not steam jets | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets | 0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system. |
| | | High | Single | Not steam jets | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets | 0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system. |
| | | | Multiple | Not steam jets | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets | 0.02 kg TOC/Mg of product *AND* 6.0 percent ethylene glycol by weight in the cooling water in the cooling tower. |
| TPA | Raw Materials Preparation. | Low | | | 0.04 kg TOC/Mg of product. |
| | | High | Single | | (same as above). |

TABLE 2.—SUMMARY OF NSPS PET STANDARDS—Continued

| Process | Affected facility | Viscosity | Number of end finishers | Type of vacuum producer | Standard |
|---|---|---|---|---|---|
| | | ..... | Multiple ..... | ..... | (same as above). |
| TPA ..... | Polymerization Reaction. | Low ..... | ..... | Not steam jets ..... | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets ..... | 0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system. |
| | | High ..... | Single ..... | Not steam jets ..... | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets ..... | 0.02 kg TOC/Mg of product *AND* 0.35 percent ethylene glycol by weight in the effluent exiting the vacuum system. |
| | | | Multiple ..... | Not steam jets ..... | 0.02 kg TOC/Mg of product. |
| | | | | Steam jets ..... | 0.02 kg TOC/Mg of product *AND* 6.0 percent ethylene glycol by weight in the cooling water in the cooling tower. |

Key:
DMT = dimethyl terephthalate.
TPA = terephthalic acid.

In a manner similar to polystyrene facilities, subpart DDD has uncontrolled emission rate thresholds at or below which modified or reconstructed PET facilities are exempt. Table 3 summarizes these threshold emission rates.

TABLE 3.—SUMMARY OF PET THRESHOLD EMISSION RATES

| Production process | Process section | Uncontrolled emission rate, kg TOC/Mg product [a] |
|---|---|---|
| Poly(ethylene terephthalate), dimethyl terephthalate process ..... | Material Recovery ..... | 0.12 [b,c] |
| | Polymerization Reaction ..... | 1.80 [c,d,e] |
| Poly(ethylene terephthalate), terephthalic acid process ..... | Raw Materials ..... | g |
| | Preparation ..... | 1.80 [c,e,h] |
| | Polymerization Reaction ..... | 3.92 [c,f,h] |

[a] "Uncontrolled emission rate" refers to the emission rate of a vent stream that vents directly to the atmosphere and to the emission rate of a vent stream to the atmosphere that would occur in the absence of any add-on control devices but after any material recovery devices that constitute part of the normal material recovery operations in a process line where potential emissions are recovered for recycle or resale.
[b] Emission rate applies to continuous emissions only.
[c] Applies to modified or reconstructed affected facilities only.
[d] Includes emissions from the cooling water tower.
[e] Applies to a process line producing low viscosity poly(ethylene terephthalate).
[f] fApplies to a process line producing high viscosity poly(ethylene terephthalate).
[g] See footnote h.
[h] Applies to the sum of emissions to the atmosphere from the polymerization reaction section (including emissions from the cooling water tower) and the raw materials preparation section (i.e., the esterifiers).

In 1994 (59 FR 46350, September 8, 1994), the EPA promulgated national emission standards for hazardous air pollutants (NESHAP) for industrial process cooling towers (40 CFR part 63, subpart G). This rule prohibits the use of chromium-based water treatment chemicals in industrial process cooling towers. Owners and operators of existing industrial process cooling towers must comply within 18 months of September 8, 1994, while owners and operators of new industrial process cooling towers must comply by September 8, 1994 or at initial start-up, depending on when construction was commenced.

## III. Authority for National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

### *A. Source of Authority for NESHAP Development*

Section 112 of the Act gives the EPA the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The EPA must list all known source categories and subcategories of "major sources" (defined below) that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes ABS, SAN, MABS, MBS, polystyrene, and PET. Today's action proposes to add nitrile resin production to this list.

### *B. Criteria for Development of NESHAP*

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section

112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. Consideration of control levels more stringent than the MACT floor (described below) must reflect consideration of the cost of achieving the emission reduction, any non-air quality, health, and environmental impacts, and energy requirements.

The MACT floor is the least stringent level allowed for MACT standards. For new sources, the standards for a source category or subcategory ''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'' (section 112(d)(3) of the Act). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for categories or subcategories with fewer than 30 sources (section 112(d)(3) of the Act). These two minimum levels of control define the MACT floor for new and existing sources.

Two interpretations have been evaluated by the EPA for representing the MACT floor for existing sources. One interpretation is that the MACT floor is represented by the worst performing source of the best 12 percent performing sources. The second interpretation is that the MACT floor is represented by the ''average emission limitation achieved'' by the best performing sources, where the ''average'' is based on a measure of central tendency, such as the arithmetic mean, median, or mode. This latter interpretation is referred to as the ''higher floor interpretation.'' In a June 6, 1994 **Federal Register** notice (59 FR 29196), the EPA presented its interpretation of the statutory language concerning the MACT floor for existing sources. Based on a review of the statute, legislative history, and public comments, the EPA believes that the ''higher floor interpretation'' is a better reading of the statutory language. The determination of the MACT floor for existing sources under today's rule followed the ''higher floor interpretation.''

## IV. Summary of Proposed Standards

### *A. Source Categories To Be Regulated*

Today's proposed standards would regulate organic HAP process emissions from facilities in one of the 18 thermoplastic subcategories listed below, provided that a facility is determined to be a major source. For this proposed rule, an affected source is defined as one of the following:

- All organic HAP emission points at a facility using a continuous emulsion process to produce ABS.
- All organic HAP emission points at a facility using a continuous mass process to produce ABS.
- All organic HAP emission points at a facility using a batch emulsion process to produce ABS.
- All organic HAP emission points at a facility using a batch suspension process to produce ABS.
- All organic HAP emission points at a facility using a batch latex process to produce ABS.
- All organic HAP emission points at a facility producing MABS.
- All organic HAP emission points at a facility producing MBS.
- All organic HAP emission points at a facility using a continuous process to produce SAN.
- All organic HAP emission points at a facility using a batch process to produce SAN.
- All organic HAP emission points at a facility producing ASA/AMSAN.
- All organic HAP emission points at a facility using a continuous process to produce polystyrene.
- All organic HAP emission points at a facility using a batch process to produce polystyrene.
- All organic HAP emission points at a facility producing EPS.
- All organic HAP emission points at a facility using a continuous TPA process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a batch TPA process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a continuous DMT process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility using a batch DMT process to produce PET and any collocated solid state processes.
- All organic HAP emission points at a facility producing nitrile resins.

The proposed rule regulates emissions from solid state PET processes if they are collocated with a TPA or DMT fed PET process, but does not regulate emissions from independently located solid state PET processes (i.e., those that purchase low molecular weight PET from an off-site source). As part of the rulemaking, information was submitted by the industry for collocated solid state PET processes, but none was submitted for independently located solid state PET processes.

(**Note:** The data request did not distinguish solid state as a separate process which might have precipitated companies not submitting data concerning PET produced by this process.)

In addition, the EPA believes that independently located solid state PET processes are likely to be non-major sources because there is not a significant source of organic HAP emissions from the solid state process. The emissions from a solid state process are typically the result of release of residual monomer in the low molecular weight PET. For these reasons, the EPA chose not to include independently located solid state PET processes in today's proposed rule.

### *B. Relationship to Other Rules*

Sources subject to the proposed rule are also subject to other existing rules. In some cases, the proposed rule supersedes existing rules and affected sources are no longer required to comply with the existing rule. In other cases, there is no conflict between the existing rule and the proposed rule, and in these cases, the affected source must comply with both rules.

Sources subject to the proposed rule and subject to the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of the proposed rule. After the compliance date of the proposed rule, compliance with the proposed rule will constitute compliance with subpart I.

Sources subject to the proposed rule may have storage vessels subject to the NSPS for Volatile Organic Liquid Storage Vessels (40 CFR part 60, subpart Kb). After the compliance date for the proposed rule, such storage vessels are only subject to the proposed rule and are no longer required to comply with subpart Kb.

Some sources subject to the proposed rule that produce PET or polystyrene are also subject to the NSPS for Polymers Manufacturing (40 CFR part 60, subpart DDD). After the compliance date for the proposed rule, such sources are only subject to the proposed rule and are no longer required to comply with subpart DDD. As part of this rulemaking, the EPA is proposing to modify subpart DDD to exclude reference to the manufacture of polystyrene and PET.

Sources subject to the proposed rule may have cooling towers subject to the NESHAP for Industrial Cooling Towers

(40 CFR part 63, subpart Q). There is no conflict between the requirements of subpart Q and the proposed rule. Therefore, sources subject to both rules must comply with both rules.

*C. Pollutants To Be Regulated*

The subcategories covered by today's proposed rule emit a variety of organic HAP. Among the most significant emissions of organic HAP are the following: Styrene, acrylonitrile, and butadiene from styrene-based resin production, which includes the production of ABS, SAN, MABS, MBS, and polystyrene; acrylonitrile from nitrile resin production; and ethylene glycol, methanol, acetaldehyde, and dioxane from PET production. The proposed standards would regulate emissions of these compounds, as well as a variety of other organic HAP that are emitted.

*D. Affected Emission Points*

Emissions from the following types of emission points (i.e. emission source types) are being covered by today's proposed rule: storage vessels, process vents, equipment leaks, wastewater operations, heat exchange systems and process contact cooling towers.

*E. Format of the Standards*

As discussed in more detail in Section IV.F, Proposed Standards, the Hazardous Organic NESHAP (HON) (subparts F, G, H, and I of 40 CFR part 63), the polymer manufacturing NSPS (subpart DDD of 40 CFR part 60), and the Batch Processes Alternative Control Techniques (ACT) document (EPA 453/R–93–017, November 1993; Docket No. A–92–45, Category II–A) provided a basis for selection of the proposed formats. In most instances, the format of today's proposed standards is the same as those found in the HON, Batch Processes ACT, and subpart DDD. The following paragraphs summarize the selected formats, including those that are different from the HON, Batch Processes ACT, and subpart DDD. The formats and their selection are discussed in more detail in the Basis and Purpose Document for this proposed regulation (Docket No. A–92–45, Category II–A).

For storage vessels, the format of the proposed standards is dependent on the method selected to comply with the standards. If tank improvements (e.g., internal or external floating roofs with proper seals and fittings) are selected, the format is a combination of design, equipment, work practice, and operational standards. If a closed vent system and control device are selected, the format is a combination of design and equipment standards.

For process vents, the format of the proposed standards is also dependent on the method selected to comply with the standards. If a flare is selected, the format is a combination of equipment and operating specifications. If a control device other than a flare is used, the formats are a percent reduction and an outlet concentration.

For equipment leaks, the proposed standards incorporate several formats: Equipment, design, base performance levels (e.g., maximum allowable percent leaking valves), work practices, and operational practices. Different formats are necessary for different types of equipment because of the nature of the equipment, available control techniques, and applicability of the measurement method.

For wastewater streams requiring control, the proposed standards incorporate several formats: Equipment, operational, work practice, and emission standards. The particular format selected depends on which portion of the wastewater stream is involved. For transport and handling equipment, the selected format is a combination of equipment standards and work practices. For the reduction of organic HAP from the wastewater stream itself, several alternative formats are included, including five alternative numerical emission limit formats (overall percent reduction for total volatile organic HAP (VOHAP), individual organic HAP percent reduction, effluent concentration limit for total VOHAP, individual VOHAP effluent concentration limits, and mass removal for organic HAP) and equipment design and operation standard for a steam stripper. For vapor recovery and destruction devices other than flares, the format is a weight percent reduction. For flares, the format is a combination of equipment and operating specifications.

Finally, a work practice standard is adopted for all cooling water/process heat exchange systems at Group IV resin facilities. This standard requires a leak detection and repair program to detect and repair leaks of organic HAP into cooling tower water. In addition, the proposed standards include a work practice standard that prohibits the use of cooling tower water in contact condensers in vacuum systems located at PET facilities.

*F. Proposed Standards*

With relatively few exceptions, the standards being proposed under today's action for storage vessels, continuous process vents, equipment leaks, wastewater operations, and heat exchange systems are the same as those promulgated for the corresponding types of emission points at facilities subject to the HON (subparts F, G, H, and I). The proposed standards also require emissions from certain batch process vents to be reduced by at least 90 percent or to be controlled in a flare that meets the requirements of § 63.11(b) of subpart A of 40 CFR part 63. (The criteria used to determine which batch process vents require control was based on the approach described in the Batch Processes ACT.) The standards being proposed today for certain continuous process vents from polystyrene facilities and from PET facilities using a continuous process require the same levels of control as were promulgated for these facilities under subpart DDD of 40 CFR part 60. Finally, for PET facilities, the proposed standards would prohibit the use of cooling tower water in contact condensers in the vacuum systems and would require that all vacuum system wastewater containing any of the organic HAP identified in Table 9 of the HON wastewater provisions be controlled to the same level of control as required under the HON, regardless of the wastewater stream's organic HAP content or flowrate.

Under the proposed standards, emissions from existing or new batch process vents, heat exchange systems not including process contact cooling towers, and equipment leaks are required to be controlled to the levels specified in the proposed standards. Emissions from existing storage vessels, continuous process vents, process wastewater streams, and process contact cooling towers are required to be controlled to the levels specified in the proposed standards or alternatively, the emissions averaging compliance approach specified in the rule may be used. Emissions from new storage vessels, continuous process vents, process wastewater streams, and process contact cooling towers are required to be controlled to the levels specified in the proposed standards. The emissions averaging compliance approach may not be used for new sources.

Tables 4 and 5 summarize the level of control being proposed under today's proposed standards. For those types of emission points where the level of control is the same as the HON, this is indicated in the table by the acronym ''HON.'' Similarly, where the proposed level of control is the same as promulgated under subpart DDD of 40 CFR part 60, this is indicated by the use of the words ''same as under subpart DDD.'' Finally, where the proposed

level of control is more stringent than the level of control in the HON or in subpart DDD for that type of emission point, the words ''MACT floor'' are used.

TABLE 4.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES IN RELATIONSHIP TO SUBPARTS G AND H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60

| Subcategory | Type of emission point | | | | |
|---|---|---|---|---|---|
| | Storage vessels | Process vents | Equipment leaks | Wastewater | Heat exchange systems |
| ABS, continuous emulsion. | HON ..... | HON ..... | HON ..... | HON ..... | HON for heat exchange systems. |
| ABS, continuous mass | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| ABS, batch emulsion . | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| ABS, batch suspension. | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| ABS, latex ..... | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| MABS ..... | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| MBS ..... | HON ..... | Continuous Process Vents: MACT Floor Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| SAN, continuous ..... | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| SAN, batch ..... | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| ASA/AMSAN ..... | MACT Floor. | MACT Floor ..... | HON ..... | No control ..... | HON for heat exchange systems. |
| Polystyrene, continuous. | MACT Floor. | Continuous Process Vents from material recovery: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| Polystyrene, batch ..... | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| Expandable polystyrene. | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |
| PET-TPA, continuous | HON ..... | Continuous Process Vents from raw material preparation and polymerization reaction sections: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON for wastewater (including all vacuum system generated wastewater).[a]. | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |
| PET-TPA, batch - DMT, batch. | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON for wastewater (including all vacuum system generated wastewater).. | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |
| PET-DMT, continuous | HON ..... | Continuous Process Vents from material recovery and polymerization reaction sections: same as subpart DDD Other Continuous Process vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON ..... | HON for wastewater (including all vacuum system generated wastewater).[a]. | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |

TABLE 4.—SUMMARY OF PROPOSED STANDARDS FOR EXISTING SOURCES IN RELATIONSHIP TO SUBPARTS G AND H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60—Continued

| Subcategory | Type of emission point | | | | |
|---|---|---|---|---|---|
| | Storage vessels | Process vents | Equipment leaks | Wastewater | Heat exchange systems |
| Nitrile | MACT Floor. | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or compliant flare. | HON | HON | HON for heat exchange systems. |

[a] Vacuum system wastewater streams containing any organic HAP identified in Table 9 of the HON wastewater provisions (subpart G) shall be considered Group 1 and are required to be controlled.

TABLE 5.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES IN RELATIONSHIP TO SUBPARTS G & H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60

| Subcategory | Type of emission point | | | | |
|---|---|---|---|---|---|
| | Storage vessels | Process vents | Equipment leaks | Wastewater | Heat exchange systems |
| ABS, continuous emulsion. | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| ABS, continuous mass | Regulatory Alternative 2[a]. | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| ABS. batch emulsion | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| ABS. batch suspension. | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| ABS, latex | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| MABS | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| MBS | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| SAN, continuous | MACT Floor. | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| SAN, batch | HON | MACT Floor | HON | HON | HON for heat exchange systems. |
| ASA/AMSAN | MACT Floor. | MACT Floor | HON | No control | HON for heat exchange systems. |
| Polystyrene, continuous. | MACT Floor. | Continuous Process Vents from material recovery: Same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| Polystyrene, batch | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| Expandable polystyrene. | HON | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON | HON for heat exchange systems. |
| PET—TPA, continuous. | HON | Continuous Process Vents from raw material preparation and polymerization reaction sections: same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON | HON for wastewater (including all vacuum system generated wastewater).[b]. | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |

TABLE 5.—SUMMARY OF PROPOSED STANDARDS FOR NEW SOURCES IN RELATIONSHIP TO SUBPARTS G & H OF 40 CFR PART 63 AND SUBPART DDD OF 40 CFR PART 60—Continued

| Subcategory | Type of emission point | | | | |
|---|---|---|---|---|---|
| | Storage vessels | Process vents | Equipment leaks | Wastewater | Heat exchange systems |
| PET—TPA, batch—DMT, batch. | HON ..... | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON ..... | HON for wastewater (including all vacuum system generated wastewater).[b] | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |
| PET—DMT, continuous. | HON ..... | Continuous Process Vents from material recovery and polymerization reaction sections: same as subpart DDD Other Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON ..... | HON for wastewater (including all vacuum system generated wastewater).[b] | No cooling tower water allowed in vacuum system contact condensers. HON for heat exchange systems. |
| Nitrile ..... | MACT Floor. | Continuous Process Vents: HON Batch Process Vents: 90 percent reduction or a compliant flare. | HON ..... | HON ..... | HON for heat exchange systems. |

[a] The proposed standard is more stringent than the MACT floor, which is more stringent than the HON.
[b] Vacuum system wastewater streams containing any organic HAP identified in Table 9 of the HON wastewater provisions (subpart G) shall be considered Group 1 and are required to be controlled.

1. Storage vessels

Tables 6 and 7 summarize the proposed standards for existing and new storage vessels, respectively. The proposed standards would require owners and operators to first determine whether or not a storage vessel was required to be controlled. This is done through the application of certain criteria to each storage vessel. For those storage vessels determined to require control, the proposed rule then specifies the level of control required.

TABLE 6.—PROPOSED STANDARDS FOR EXISTING STORAGE VESSELS

| Subcategory | Applicability criteria [a] | Level of Control [b] |
|---|---|---|
| All ABS SAN, continuous SAN, batch MABS MBS Polystyrene, batch All PET Nitrile (except as noted below). | Vapor pressure ≥0.75 psia and capacity ≥40,000 gallons [c]. | If vapor pressure is <11.1 psia: 1. fixed roof and internal floating roof; or |
| | Vapor pressure ≥1.9 psia and capacity ≥20,000 gallons [c] ..... | 2. external floating roof; or 3. an external floating roof converted to an internal floating roof; or 4. a closed vent system and control device. |
| | | If vapor pressure ≥11.1 psia: a closed vent system and control device [d] |
| ASA/AMSAN ..... | AMST for capacities ≥10,200 gallons ..... | 98 percent reduction. |
| | Styrene/acrylonitrile for capacities ≥1,000 gallons. | 98 percent reduction. |
| | Acrylonitrile for capacities ≥20,000 gallons ..... | 98 percent reduction. |
| | Any other chemical: ..... | If vapor pressure is <11.1 psia: |
| | Vapor pressure ≥0.75 psia and capacity ≥40,000 gallonsc. | 1. fixed roof and internal floating roof; or 2. external floating roof; or |
| | Vapor pressure ≥1.9 psia and capacity ≥20,000 gallons [c] ..... | 3. an external floating roof converted to an internal floating roof; or 4. a closed vent system and control device. |
| | | If vapor pressure ≥11.1 psia: a closed vent system and control device [0d] |
| Nitrile ..... | Control all acrylonitrile storage vessels ≥3,500 gallons. | (same as the HON level of control). |
| Polystyrene, continuous ..... | Vapor pressure 0.28 psia and capacity ≥20,000 gallons. | (same as the HON level of control) |
| | Vapor pressure ≥2.08 psia and capacity ≥10,000 but less than 20,000 gallons ..... | |

[a] Storage vessels that meet the criteria are defined as Group 1 storage vessels and control of their emissions would be required. Storage vessels that do not meet the criteria are defined as Group 2 storage vessels and control of their emissions is not required.
[b] Required for Group 1 storage vessels only.
[c] The applicability criteria for these subcategories are the same as in the HON.
[d] The level of control is the same as the HON.
KEY: AMST = alpha methyl styrene.

TABLE 7.—PROPOSED STANDARDS FOR NEW STORAGE VESSELS

| Subcategory | Applicability criteria [a] | Level of control [b] |
|---|---|---|
| All ABS (except CM) SAN, batch MABS MBS Polystyrene, batch All PET Nitrile (except as noted below). | Vapor pressure ≥0.1 psia and capacity ≥40,000 gallons [c]. | If vapor pressure is <11.1 psia:<br>1. fixed roof and internal floating roof; or<br>2. external floating roof; or<br>3. an external floating roof converted to an internal floating roof; or<br>4. a closed vent system and control device.<br>If vapor pressure ≥11.1 psia: a closed vent system and control device [d]. |
| | Vapor pressure ≥1.9 psia and capacity ≥10,000 gallons [c] ..... | |
| ABS, CM ..... | VP ≥ 1.9 psia and capacity ≥10,000 gallons and <12,000 gallons. | (same as the HON level of control). |
| | Styrene for capacities ≥12,000 gallons ..... | |
| | VP ≥ 0.0782 psia and ≥12,000 gallons ..... | |
| SAN, continuous ..... | VP ≥ 0.0735 to <0.1 psia and capacity ≥600,000 gallons. | 90 percent reduction. |
| | VP ≥ 0.1 to <1.45 psia and ≥40,000 gallons ... | (same as the HON level of control). |
| | VP ≥ 1.45 to <14.7 psia and capacity ≥8,000 to <40,000 gallons. | 98 percent reduction. |
| ASA/AMS ..... | AMST for capacities ≥10,200 gallons ..... | 98 percent reduction. |
| | Styrene/acrylonitrile for capacities ≥1,000 gallons. | 98 percent reduction. |
| | Acrylonitrile for capacities ≥20,000 gallons ..... | 98 percent reduction. |
| | Any other chemical: ..... | (same as the HON level of control). |
| | Vapor pressure ≥0.1 psia and capacity ≥40,000 gallons [c]. | |
| | Vapor pressure ≥1.9 psia and capacity ≥10,000 gallons [c] ..... | |
| Nitrile ..... | Control all acrylonitrile storage vessels ≥ 3,500 gallons. | (same as the HON level of control). |
| Polystyrene, continuous ..... | Vapor pressure ≥ 0.78 psia and capacity ≥ 29,000 gallons. | (same as the HON level of control). |
| | Vapor pressure ≥ 0.09 psia and capacity ≥ 12,000 gallons but less than 29,000 gallons. | |
| | Vapor pressure ≥ 1.1 psia and capacity ≥ 5,170 gallons but less than 12,000 gallons . | |

[a] Storage vessels that meet the criteria are defined as Group 1 storage vessels and control of their emissions would be required. Storage vessels that do not meet the criteria are defined as Group 2 storage vessels and control of their emissions is not required.
[b] Required for Group 1 storage vessels only.
[c] The applicability criteria for these subcategories are the same as those in the HON.
[d] The level of control is the same as in the HON.
KEY: CM = continuous mass; VP = vapor pressure.

a. *Applicability criteria.* For most existing and new storage vessels, the proposed criteria for determining which storage vessels are to be controlled are identical to the criteria from the HON storage vessel provisions and are based on storage vessel capacity and vapor pressure of the stored material. Typically, the vapor pressures and storage vessel capacity criteria that determine Group 1 or Group 2 status are different for existing and new sources. As in the HON, if a storage vessel meets the applicability criteria and is required to be controlled under today's proposed rule, it is referred to as a Group 1 storage vessel. If a storage vessel is not required to apply controls, it is referred to as a Group 2 storage vessel.

For new ABS, continuous mass facilities, the applicability criteria also rely on vapor pressure and storage vessel capacity, but use different levels of each for defining a Group 1 storage vessel (see Table 7).

For new continuous SAN facilities, the proposed standards for storage vessels rely on five different combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 7.

For existing continuous polystyrene facilities, the proposed standards for storage vessels rely on two combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 6.

For new continuous polystyrene facilities, the proposed standards for storage vessels rely on three combinations of vapor pressure and storage vessel capacity to determine Group 1 storage vessels. These combinations of vapor pressure and storage vessel capacity are shown in Table 7.

For existing and new ASA/AMSAN facilities, the proposed standards for storage vessels have two parts to the applicability criteria. The first part identifies specific chemical and storage vessel capacity combinations. The second part applies vapor pressure and storage vessel capacity applicability criteria for storage vessels containing chemicals not specifically identified.

For existing and new nitrile facilities, all acrylonitrile storage vessels with capacities greater than or equal to 3,500 gallons are required to be controlled. For all other chemicals, the applicability criteria are the same as in the HON.

b. *Level of control.* Except for the subcategories discussed below, the level of control required for storage vessels determined to be Group 1 storage vessels under the appropriate applicability criteria being proposed in today's rule is either technical modification to the tank (e.g., the installation of an internal floating roof)

or the use of a closed vent system and control device that is generally required to achieve at least 95 percent emission reduction. (This is the same level of control as required under the HON.) For all subcategories, storage vessels determined to be Group 2 are not required to be controlled.

For new continuous SAN facilities, different levels of control for two of the five applicability criteria combinations are being proposed. For the applicability combination of vapor pressure greater than 0.0735 but less than 0.1 pounds per square inch absolute (psia) *and* storage vessel capacity greater than or equal to 600,000 gallons, the proposed standard would require an emission reduction of 90 percent or more. For the applicability combination of vapor pressure greater than or equal to 1.45 but less than 14.7 psia *and* storage vessel capacity greater than or equal to 8,000 gallons but less than 40,000 gallons, the proposed standard would require an emission reduction of 98 percent or more.

For ASA/AMSAN facilities, different levels of control for storage vessels determined to be Group 1 based on the specific chemical/storage vessel capacity combination criteria are being proposed. For these storage vessels, the level of control being proposed is 98 percent.

2. Process Vents

As for storage vessels, the proposed standards for process vents require owners and operators to first determine whether or not a process vent (or set of process vents) requires control and, if so, then specifies the level of control required.

a. *Applicability criteria.* Tables 8 and 9 summarize the proposed applicability criteria for continuous and batch process vents at existing and new facilities, respectively. As for storage vessels, process vents that meet the applicability criteria are referred to as Group 1 process vents and those that do not are referred to as Group 2 process vents. With the exceptions discussed below, the proposed rule would require control of only those process vents determined to be Group 1 process vents under the appropriate criteria.

TABLE 8.—SUMMARY OF PROPOSED PROCESS VENT APPLICABILITY CRITERIA FOR EXISTING FACILITIES

| Process vents | Subcategory | Applicability criteria | |
|---|---|---|---|
| Continuous Unit Operations ..... | All (except as specified below) ..... | TRE[a] ≤ 1. | |
| | MBS ..... | TRE[a] ≤ 3.7. | |
| | ASA/AMSAN ..... | None. All vents are required to be controlled. | |
| | Polystyrene, continuous: material recovery ..... | None. Must meet standard. | |
| | PET/DMT, continuous: material recovery ..... | 0.12 kg TOC per Mg product[b]. | |
| | PET/DMT, continuous: polymerization reaction | None. Must meet standard. | |
| | PET/TPA, continuous: raw material preparation and polymerization reaction. | None. Must meet standard. | |
| Batch Unit Operations ..... | All ..... | Stream volatility | Flowrate regression equation[c] |
| | | Low ..... | (0.00437) AE—51.6[d]. |
| | | Moderate ..... | (0.00187) AE—14.0[d]. |
| | | High ..... | (0.00081) AE—8.5[d]. |

[a] The total resource effectiveness (TRE) value is a reflection of the cost effectiveness of controlling an individual process vent. There are different TRE coefficients for existing and new process vents.
[b] If emissions from the described process vents are greater than the applicability criteria, control is required.
[c] If actual stream flowrate (standard cubic meters per minute) is less than the flowrate calculated by the regression equation, the process vent is required to be controlled.
[d] AE = annual emissions in kilograms per year.

TABLE 9.—SUMMARY OF PROPOSED PROCESS VENT APPLICABILITY CRITERIA FOR NEW FACILITIES

| Process vents | Subcategory | Applicability criteria | |
|---|---|---|---|
| Continuous Unit Operations ..... | All (except as specified below) ..... | TRE[a] ≤ 1 | |
| | SAN, batch ..... | None. Must meet standard. | |
| | ASA/AMSAN ..... | None. All vents are required to be controlled. | |
| | Polystyrene, continuous: material recovery ..... | None. Must meet standard. | |
| | PET/DMT, continuous: material recovery and polymerization reaction. | None. Must meet standard. | |
| | PET/TPA, continuous: Raw material preparation and polymerization reaction. | None. Must meet standard. | |
| Batch Unit Operations ..... | All (except as specified below) ..... | Stream volatility | Flowrate regression equation[b] |
| | | Low ..... | (0.00437) AE—51.6[c]. |
| | | Moderate ..... | (0.00187) AE—14.0[c]. |
| | | High ..... | (0.00081) AE—8.5[c]. |
| | SAN, batch ..... | None ..... | Must meet standard. |

[a] The total resource effectiveness (TRE) value is a reflection of the cost effectiveness of controlling an individual process vent. There are different TRE coefficients for existing and new process vents.
[b] If actual stream flowrate (standard cubic meters per minute) is less than the flowrate calculated by the regression equation, the process vent is required to be controlled.
[c] AE=annual emissions in kilograms per year.

Except for certain PET and polystyrene continuous process vents, Group 1 continuous process vents are determined by comparing each process vent's total resource effectiveness (TRE) value to a TRE value of unity. The TRE is a reflection of the costs and other associated impacts of controlling an individual process vent. It is determined based on process vent stream characteristics such as emissions (mass per hour), heat content, and flowrate. The procedure in the proposed rule for determining Group 1 process vents is the same procedure as in the HON.

Except for continuous process vents at existing MBS facilities, continuous process vents with a TRE value of 1 or less would be classified as a Group 1 process vent. For continuous process vents at existing MBS facilities, a TRE value of 3.7 or less defines a Group 1 process vent.

As seen in Tables 8 and 9, there are no applicability criteria specified for several subcategories. At these facilities, a Group 1/Group 2 determination does not need to be made and all process vents are required to be controlled.

For process vents associated with the material recovery section from existing PET facilities using a continuous DMT process, Group 1 process vents are determined by comparing uncontrolled emission rates with threshold emission rates. Process vents associated with the material recovery section at an existing PET facility using a continuous DMT process would be considered Group 1 process vents if the uncontrolled emission rate is greater than 0.12 kg TOC per Mg of product (see Table 8). For other process vents at existing and new polystyrene and PET facilities (see Tables 8 and 9), there are no applicability criteria. These process vents must meet the proposed standards.

For process vents from batch unit operations, the process vent is first characterized as to its volatility—low, medium, or high. Next, the estimate of the stream's annual emissions is entered in the appropriate flowrate regression equation. If the actual flowrate is less than the calculated flowrate, then the batch process vent is a Group 1 vent under these standards, and control is required. As seen in Tables 8 and 9, the batch process vent applicability criteria are the same for existing and new sources, except for new SAN batch facilities.

For new SAN batch facilities, there are no applicability criteria for individual process vent streams; all process vents are subject to control in that the proposed standard for these facilities requires an overall emission reduction of 84 percent from all process vents.

A batch process vent that is combined with a continuous process vent prior to a control or recovery device is not required to comply with the batch process vent provisions if there are no emissions to the atmosphere up until the point the batch vent stream is combined with the continuous vent stream. The combined vent would be required to comply with the continuous process vent provisions. The presence of a batch process vent in a continuous process vent stream would necessitate that all applicability tests and performance tests be conducted while the batch process vent is emitting (i.e. at maximum operating conditions).

b. *Level of control.* For continuous process vents, most of the facilities are required to control Group 1 process vents by at least 98 percent. If a flare is used, it must meet the design and operating requirements of § 63.11(b) of subpart A of 40 CFR part 63. Exceptions to this are described in the paragraphs below.

For continuous process emissions from the material recovery section of polystyrene plants using a continuous process, the proposed standards would (1) limit the emissions of TOC (minus methane and ethane) to 0.0036 kg TOC/Mg per megagram (Mg) of product (0.0036 pounds (lbs) TOC/1,000 lbs of product) from each material recovery section, or (2) limit the outlet gas temperature from each final condenser in each material recovery section to −25°C (−13°F), or (3) reduce emissions from each material recovery section by 98 weight percent or to 20 ppmv. These are the same requirements as in subpart DDD.

For PET facilities using a continuous TPA process, the proposed standards would limit continuous process vent emissions from (1) the raw material preparation section to 0.04 kg TOC/Mg of product and (2) the polymerization reaction section to 0.02 kg TOC/Mg of product. Similarly, for PET facilities using a continuous DMT process, the proposed standards would limit (1) continuous process vent emissions from the material recovery section to 0.018 kg TOC/Mg of product or the temperature to 37°F from each final condenser in the material recovery section and (2) continuous process vent emissions from the polymerization reaction section to 0.02 kg TOC/Mg of product. These are also the same requirements that are in subpart DDD, with the exception that cooling tower emissions would not be considered as part of the polymerization reaction section.

For Group 1 continuous process emissions from other process sections at polystyrene and PET facilities, the proposed standards would require emission reduction by at least 98 percent or control by a flare that meets the requirements of § 63.11(b) of subpart A of 40 CFR part 63.

For batch process vents, the proposed standards would require Group 1 process vents from batch unit operations to be controlled by at least 90 percent.

There are three subcategories where the proposed standards are based on the MACT floor. These subcategories are existing MBS facilities, existing and new ASA/AMSAN facilities, and new SAN, batch facilities.

For existing MBS facilities, the proposed standards require continuous process vents at facilities to either (1) meet an emission level of 0.000590 kg of emissions per megagram of product for all continuous process vents or (2) control all continuous process vents with a total resource effectiveness (TRE) of 3.7 or less by at least 98 percent. The TRE is to be calculated for each process vent using the same TRE coefficients as for other existing sources. The development of the MACT floor and applicability criteria for MBS existing sources is documented in Docket No. A–92–45, Category II–B and in the SID.

For both existing and new ASA/AMSAN facilities, the proposed rule requires all process vents (continuous and batch) at both existing and new facilities to control emissions by at least 98 percent.

For new SAN, batch facilities, the proposed rule requires an overall emission reduction of 84 percent of process vent emissions.

3. Equipment Leaks

For all the subcategories, both existing and new facilities would be required to implement a leak detection and repair (LDAR) program. With a few exceptions, the LDAR program being proposed is the same as that specified in the National Emission Standards for Organic HAP for Equipment Leaks (40 CFR part 63, subpart H) and the National Emission Standards for Organic HAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I). Under the proposed standards, work practice requirements to reduce emissions from equipment that are in volatile HAP service for 300 or more hours per year (hr/yr) are specified. The proposed standards define ''in volatile HAP service'' as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. Equipment

subject to the proposed standards are: Valves, pumps, compressors, connectors, pressure relief devices, open-ended valves or lines, sampling connection systems, instrumentation systems, agitators, surge control vessels, bottoms receivers, and closed-vent systems and control devices.

Affected sources currently complying with the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks (40 CFR part 63, subpart I) are required to continue to comply with subpart I until the compliance date of today's proposed rule. Further, affected sources complying with subpart I through a quality improvement program shall be allowed to continue these programs without interruption as part of complying with today's proposed rule. In other words, becoming subject to today's proposed rule does not restart or reset the ''compliance clock'' as it relates to reduced burden earned through a quality improvement program.

4. Wastewater

Except for ASA/AMSAN facilities, the proposed standards require owners and operators to determine for each wastewater stream at its point of generation whether it is a Group 1 or Group 2 wastewater stream. As for process vents, Group 1 wastewater streams are required to be controlled, while Group 2 wastewater streams are not required to be controlled. The wastewater stream characteristics used to make the Group 1/Group 2 applicability determination are flowrate and organic HAP concentration. The proposed criteria for determining Group 1 wastewater streams are presented in Table 10 and are the same criteria used in the HON. The level of control required for Group 1 wastewater streams is dependent upon the organic HAP constituents in the wastewater stream. The levels of control proposed for these standards are the same as those for the HON. The proposed rule would not control wastewater emissions from any existing or new ASA/AMSAN facilities.

TABLE 10.—PROPOSED WASTEWATER APPLICABILITY CRITERIA [a] [b]

| Existing source criteria | New source criteria |
|---|---|
| VOHAP[c] concentration ≧ 10,000 ppmw | Same as existing criteria |
| *or* | *and* |
| VOHAP[c] concentration ≧ 1,000 ppmw *and* flow rate ≧ 10 liters per minute | for a subset of organic HAP...VOHAP[c] concentration ≧10 ppmw *and* flowrate ≧0.02 liters per minute. |

[a] Wastewater streams meeting these criteria are considered Group 1 wastewater streams and control is required.
[b] There are exemptions for minimal flowrates and concentrations.
[c] VOHAP=volatile organic HAP.

The proposed standards require owners and operators to comply with the maintenance wastewater requirements in § 63.105 of subpart F of this part. These provisions require owners and operators to include a description of procedures for managing wastewaters generated during maintenance in their start-up, shutdown and malfunction plan. The start-up, shutdown, and malfunction plan is required under subpart A of 40 CFR part 63.

5. Heat Exchange Systems and Process Contact Cooling Towers

Today's proposed standards would require a monitoring program to detect leakage of organic HAP from the process into the cooling water. The proposed monitoring program is the same as that in the HON (subpart F of this part). The proposed rule would also prohibit the use of cooling tower water in contact condensers in the vacuum systems at PET facilities. Further, if a wastewater stream is generated from the vacuum system and it contains any of the organic HAP identified in Table 9 of the HON wastewater provisions (subpart G), the proposed rule would require it to be controlled regardless of its organic HAP concentration or flowrate. The level of control required is the same as that for a Group 1 wastewater stream.

These provisions for control of emissions from process contact cooling towers are independent of the provisions of the NESHAP for Industrial Cooling Towers (40 CFR part 63, subpart Q) which may also be applicable to these cooling towers.

The EPA solicits comments on the emission reduction potential, costs, and technical feasibility of all control options for process contact cooling towers at PET facilities. Any comments on alternate control options should address the emissions from the cooling tower, the emissions from any wastewater discharged from the equipment required by the control option, and any ''reactor process'' or ''distillation column'' vent emissions associated with the option.

6. Emissions Averaging

Today's proposed standards would apply essentially the same emissions averaging scheme as has been adopted by the HON, although the emissions averaging provisions of the proposed rule are entirely contained in the proposed rule instead of referring to the subpart G emissions averaging provisions. Under the proposed rule, emissions averaging would be allowed among five collocated existing emission points belonging to the same subcategory. This number may be increased by three additional points if pollution prevention measures are to be used to control emission points to be included in the average. However, emissions from batch process vents and equipment leaks would not be allowed to be averaged. The owner or operator must demonstrate that the averaging scheme will not result in greater hazard or risk relative to strict compliance with the standards in the absence of averaging.

The EPA specifically requests comments on the selection of the limit of (5, or 8 if pollution prevention measures are used) emission points to be allowed per subcategory for purposes of averaging in this proposed rule. Will this limit preclude known opportunities within real facilities to generate cost-effective credits within a category or subcategory? Any comments on this need to address specifics on the emission and cost quantities computed, with detailed calculations and references to show how these quantities were determined.

The EPA is including emissions from process contact cooling towers and vacuum system wastewater at existing PET facilities in the emissions averaging procedures for the proposed rule. As noted earlier, the proposed standards would (1) prohibit existing PET facilities from using cooling tower water in the contact condensers associated with vacuum systems, and (2) would require the control of any wastewater stream generated by the vacuum system containing organic HAP listed on Table 9 of the wastewater provisions in

subpart G of this part to the level required for a Group 1 process wastewater stream. Control is required regardless of the organic HAP concentration and flowrate of the stream.

The proposed prohibition for cooling tower water would eliminate organic HAP emissions from the process contact cooling towers since the cooling tower water would not come in contact with the organic HAP generated by the process. If an owner or operator elected to comply with the proposed emissions averaging procedures, the owner or operator could elect not to eliminate process contact cooling tower water from the vacuum system. This would create a debit; that is, organic HAP emissions would now occur from the cooling tower, whereas, under the proposed rule, no organic HAP emissions would occur. Thus, the proposed emissions averaging procedures only include process contact cooling towers in the equation for the calculation of debits. On the other hand, since the proposed standard would eliminate organic HAP emissions from the cooling tower, there is no opportunity for an owner or operator to control cooling tower emissions to a level more stringent than the proposed rule. Thus, the proposed emissions averaging procedures for calculating credits do not include process contact cooling towers. The EPA is specifically requesting information on methodologies which could be used to estimate emissions from process contact cooling towers.

The EPA requests comments on all aspects of the implementation of emissions averaging and on ways that the emissions averaging provisions can be made more flexible without reducing the emission reduction. A discussion of the rationale for the proposed emissions averaging provisions is contained in Chapter 4 of the Basis and Purpose Document.

*G. Compliance and Performance Test Provisions and Monitoring Requirements*

Compliance and performance test provisions and monitoring requirements contained in today's proposed rule are very similar to those found in the HON (subpart G of part 63). Each type of emission point is discussed briefly in the paragraphs below. Also, significant differences from the parameter monitoring requirements found in subpart G are discussed.

1. Continuous Process Vents

The proposed regulations for process vents from continuous unit operations (continuous process vents) require the owner or operator to either calculate a TRE index value to determine whether each continuous process vent is a Group 1 or Group 2 vent, or the owner or operator can elect to comply with the control requirements without calculating the TRE index. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations in the proposed rule.

Performance test provisions are included for Group 1 continuous process vents to verify that the control device achieves the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the proposed rule.

Compliance provisions for continuous process vents at polystyrene and PET facilities are included in the proposed rule. For owners or operators electing to comply with a kg TOC/Mg of product limit, procedures to demonstrate compliance are provided. Also, procedures are included in the proposed rule to demonstrate compliance with the requirement to reduce overall process vent emissions (continuous and batch) by 84 percent for new SAN, batch facilities.

2. Batch Process Vents

Similar to the provisions for continuous process vents, there is a procedure for determining which batch process vents are Group 1 and which are Group 2. This procedure is based on annual emissions and annual average flowrate of the batch process vent. Equations for estimating annual emissions and annual average flowrates are provided in the proposed rule.

Performance test provisions are included for Group 1 batch process vents to verify that the control or recovery device achieves the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the proposed rule.

For Group 2 batch process vents, the proposed rule requires owners and operators to establish a batch cycle limitation. The batch cycle limitation limits the number of batch cycles that can be accomplished for a given batch unit operation per year (i.e., for the operations that feed a single batch process vent). This enforceable limitation ensures that a Group 2 batch process vent does not become a Group 1 batch process vent as a result of running more batches than anticipated when the group determination was made. The determination of the batch cycle limitation is not tied to any previous production amounts. An affected source may set the batch cycle limitation at any level it desires as long as the batch process vent remains a Group 2 batch process vent. Alternatively the proposed rule would allow owners and operators to declare any Group 2 batch process vent to be a Group 1 batch process vent. In such cases, control of the batch process vent is required.

As described earlier, procedures are included in the proposed rule to demonstrate compliance with the requirement to reduce overall process vent emissions (continuous and batch) by 84 percent for new SAN, batch facilities.

3. Storage Vessels

Monitoring and compliance provisions include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must identify the appropriate monitoring procedures to be followed in order to demonstrate compliance. Monitoring parameters and procedures for many of the control devices likely to be used are already identified in other parts of the proposed rule. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the proposed rule.

4. Wastewater

For demonstrating compliance with the various requirements, the proposed rule allows the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the regulation.

5. Equipment Leaks

The proposed rule retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A ''leak'' is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (the calibration gas) in air. The observed screening value may require adjustment for response factor relative to methane if the weighted response factor of the stream exceeds a specified multiplier. The proposed rule requires the use of Method 18 to determine the organic content of a process stream. Test procedures using either a gas or a liquid for pressure testing the batch system are specified to test for leaks.

6. Heat Exchange Systems

Monitoring of cooling water is required to detect leaks in non-contact heat exchange systems. If a leak is detected, the heat exchange system must be repaired.

7. Process Contact Cooling Towers

Owners and operators of affected sources subject to these provisions are required to indicate in their Implementation Plan and Notification of Compliance Status reports that cooling tower water will not be used in contact condensers associated with vacuum systems.

8. Continuous Parameter Monitoring

When compared to the HON, the proposed rule contains two significant differences related to continuous parameter monitoring. First, the proposed rule does not allow any excused excursions. The proposed rule, as did subpart G, requires at least 75 percent of monitoring data to constitute a valid days worth of data for continuous and batch process vents. Failure to have a valid day's worth of monitoring data is considered an excursion. The criteria for determining a valid day's or hour's worth of data are provided in the proposed rule. Second, the procedure for determining the parameter monitoring level for continuous and batch process vents is both more specific and restrictive than the procedure in subpart G because it relies exclusively on performance tests.

*H. Recordkeeping and Reporting Requirements*

The general recordkeeping and reporting requirements of this subpart are very similar to those found in subpart G of 40 CFR part 63. The proposed rule also relies on the provisions of subpart A of 40 CFR part 63. A table included in the proposed rule designates which sections of subpart A apply to the proposed rule. Specific recordkeeping and reporting requirements for each type of emission point are also included in the proposed rule.

The proposed rule requires sources to keep records and submit reports of information necessary to document compliance. Records must be kept for 5 years. The following six types of reports must be submitted to the Administrator as appropriate: (1) Initial Notification, (2) Implementation Plan (if an operating permit application has not been submitted or, for new sources, an application for approval of construction or reconstruction), (3) Emissions Averaging Plan, (4) Notification of Compliance Status, (5) Periodic Reports, and (6) other reports. The requirements for each of the six types of reports are summarized below. In addition, sources complying with the equipment leak requirements contained in subpart H must follow the recordkeeping and reporting requirements of subpart H.

1. Initial Notification

The Initial Notification is due 120 days after the date of promulgation for existing sources. For new sources, it is due 180 days before commencement of construction or reconstruction, or 45 days after promulgation, whichever is later. The notification must list the thermoplastic processes that are subject to the proposed rule, and which provisions may apply (e.g., continuous process vents, batch process vents, storage vessels, wastewater, and/or equipment leak provisions). A detailed identification of emission points is not necessary for the Initial Notification. The notification, however, must include a statement of whether the affected source expects that it can achieve compliance by the specified compliance date.

2. Implementation Plan

The Implementation Plan details how the affected source plans to comply. An Implementation Plan would be required only for affected sources that have not yet submitted an operating permit application or for new sources that have not yet submitted the same information as part of their application for approval of construction or reconstruction.

The Implementation Plan would be due 12 months prior to the date of compliance. For new sources, Implementation Plans would be submitted with the Notification of Compliance Status.

The information in the Implementation Plan should be incorporated into the affected source's operating permit application. The terms and conditions of the plan, as approved by the permit authority, would then be incorporated into the operating permit.

The Implementation Plan would include a list of emission points subject to the continuous process vents, batch process vents, storage vessels, wastewater, heat exchange systems, process contact cooling towers, and equipment leak provisions and, as applicable, whether each emission point (e.g., storage vessel or process vent) is Group 1 or Group 2. The control technology or method of compliance planned for each Group 1 emission point must be specified.

The plan must also certify that appropriate testing, monitoring, reporting, and recordkeeping will be done for each Group 1 emission point. If an affected source requests approval to monitor a unique parameter, a rationale must be included.

3. Emissions Averaging Plan

The Emissions Averaging Plan would be due 18 months prior to the date of compliance. New sources are not allowed to comply through the use of emissions averaging.

For points included in emissions averaging, the Emissions Averaging Plan would include: an identification of all points in the average and whether they are Group 1 or Group 2 points; the specific control technique or pollution prevention measure that will be applied to each point; the control efficiency for each control used in the average; the projected credit or debit generated by each point; and the overall expected credits and debits. The plan must include a demonstration that the emissions averaging scheme will not result in greater hazard or risk than if the emission points would comply with the standards in the absence of averaging. The plan must also certify that the same types of testing, monitoring, reporting, and recordkeeping that are required by the proposed rule for Group 1 points will be done for all points (both Group 1 and Group 2) included in an emissions average. If an affected source requests approval to monitor a unique parameter or use a unique recordkeeping and reporting system, a rationale must be included in the Emissions Averaging Plan.

4. Notification of Compliance Status

The Notification of Compliance Status would be required 150 days after the affected source's compliance date. It contains the information for Group 1 emission points and for all emission points in emissions averages, necessary to demonstrate that compliance has been achieved. Such information includes, but is not limited to, the results of any performance tests for continuous and/or batch process vents and wastewater emission points; one complete test report for each test method used for a particular kind of emission point; TRE determinations for continuous process vents; group determinations for batch process vents; design analyses for storage vessels and wastewater emission points; monitored parameter levels for each emission point and supporting data for the designated level; and values of all parameters used to calculate emission credits and debits for emissions averaging.

5. Periodic Reports

Generally, Periodic Reports would be submitted semiannually. However, there are two exceptions. First, quarterly reports must be submitted for all points included in an emissions average. Second, if monitoring results show that the parameter values for an emission point are above the maximum or below the minimum established levels for more than 1 percent of the operating time in a reporting period, or the monitoring system is out of service for more than 5 percent of the time, the regulatory authority may request that the owner or operator submit quarterly reports for that emission point. After 1 year, semiannual reporting can be resumed, unless the regulatory authority requests continuation of quarterly reports.

All Periodic Reports would include information required to be reported under the recordkeeping and reporting provisions for each emission point. For emission points involved in emissions averages, the report would include the results of the calculations of credits and debits for each month and for the quarter. For continuously monitored parameters, the data on those periods when the parameters are above the maximum or below the minimum established levels are included in the reports. Periodic Reports would also include results of any performance tests conducted during the reporting period and instances when required inspections revealed problems. Additional information the affected source is required to report under its operating permit or Implementation Plan would also be described in Periodic Reports.

6. Other Reports

Other reports required under the proposed rule include: reports of start-up, shutdown, and malfunction; process changes that change the compliance status of process vents; and requests for extensions of repair and notifications of inspections for storage vessels and wastewater.

In addition, quarterly reporting of the number of batch cycles accomplished for Group 2 batch process vents is required. Every fourth quarterly report would be required to include the total batch cycles accomplished during the previous 12 months, and a statement whether the owner or operator is in compliance with the batch cycle limitation.

## V. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed rule, and on any statement in the preamble or the referenced supporting documents. The proposed rule was developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration, documentation or data should be provided.

Specifically, the EPA is requesting comments and data on several aspects of the proposed rule. First, the EPA solicits comments and data on the technical feasibility and costs for emission control techniques for the vacuum system and associated process contact cooling towers used in PET production as described in Section IV.F.5 of this preamble and in the Basis and Purpose Document, Chapter 6. Second, the EPA solicits comments on several aspects of the emissions averaging provisions as described in Section IV.F.6 of this preamble and in the Basis and Purpose Document, Chapter 4. The emissions averaging provisions in this proposed rule are modeled after those in the HON. The EPA is interested in comments on all aspects, but is especially interested in comments on the limitation of the number of emission points allowed in an average and on ways that the implementation of emissions averaging can be made more flexible without reducing the emission reduction. Third, the EPA solicits comments related to the use of subpart DDD emission limits and the proposed modification to subpart DDD. Fourth, and finally, in some instances, the EPA has required control more stringent than that required by the MACT floor. In these instances, the EPA has judged the impacts to be reasonable. The EPA specifically solicits comments on these decisions.

## VI. Summary of Environmental, Energy, Cost, and Economic Impacts

This section presents the air, non-air environmental (water and solid waste), energy, cost, and economic impacts resulting from the control of organic HAP emissions under this rule.

### *A. Facilities Affected by These NESHAP*

The proposed rule would affect ABS, SAN, MABS, MBS, polystyrene, PET, and nitrile facilities that are major sources in themselves, or that are located at a major source. Based on available information, all of the facilities at which these thermoplastics are produced were judged to be major sources for the purpose of developing these standards. (Final determination of major source status occurs as part of the compliance determination process undertaken by each individual source.)

Impacts are presented relative to a baseline reflecting the level of control in the absence of the rule. The current level of control was well understood because emissions and control data were collected on each facility included in the analysis. The impacts estimates were determined for both existing facilities and new facilities (i.e., those that are expected to begin operation through 1999).

The expected growth rate in each of the seven source categories was analyzed (see Docket No. A–92–45, Category II–B) and the SID. Based on this analysis, the following average annual growth rates (percent per year) through 1999 were estimated:

- ABS—4 percent.
- SAN—4 percent.
- MABS—3 percent.
- MBS—3 percent.
- Polystyrene—3 percent.
- PET—10 percent for bottle-grade resins and 4 percent for other PET resins.
- Nitrile—3 percent.

The impacts for existing sources were estimated by bringing each facility's control level up to the proposed standards. For new sources, impacts were based on identifying the number of new facilities required to meet the expected growth within the source category, identifying the types of facilities (e.g., batch versus continuous) that would be built, and then selecting a subset of the existing facilities to represent the expected growth. The impacts on these ''new'' facilities were determined by applying the proposed standards for new sources to the selected subset of facilities assuming the existing level of control. This methodology is discussed in detail in Docket No. A–92–45, Category II–B and the SID.

### *B. Primary Air Impacts*

The proposed standards are estimated to reduce organic HAP emissions from all existing sources by 11,750 Mg/yr from a baseline level of 24,780 Mg/yr. This is a 47 percent reduction. For new facilities, the proposed standards are estimated to reduce organic HAP emissions by 7,395 Mg/yr from a baseline level of 14,920 Mg/yr, for a 50 percent reduction. Table 11 summarizes the organic HAP emission reductions for each individual subcategory.

TABLE 11.—Organic HAP Emissions and Emission Reductions

| Subcategory | Existing sources | | | New sources | | |
|---|---|---|---|---|---|---|
| | Baseline, Mg/yr | Emission reduction, Mg/yr | Percent reduction | Baseline, Mg/yr | Emission Reduction, Mg/yr | Percent reduction |
| ABS, continuous mass | 240 | 190 | 80% | 95 | 87 | 92% |
| ABS, continuous emulsion [a] | 1,110 | >180 | >16% | 400 | >115 | >29% |
| ABS, batch emulsion | 500 | 56 | 11% | 35 | 15 | 43% |
| ABS, batch suspension | 15 | 5 | 33% | 13 | 5 | 38% |
| ABS, latex | 3 | 2 | 67% | — | — | — |
| SAN, continuous | 110 | 65 | 60% | 40 | 25 | 63% |
| SAN, batch | 35 | 13 | 37% | 20 | 6 | 30% |
| ASA/AMSAN | 100 | 94 | 94% | — | — | — |
| MABS [a] | 86 | >38 | >44% | — | — | — |
| MBS | 190 | 130 | 68% | 20 | 16 | 80% |
| Polystyrene, continuous | 1,440 | 1,060 | 74% | 330 | 240 | 73% |
| Polystyrene, batch | 190 | 130 | 68% | — | — | — |
| Expandable polystyrene | 450 | 92 | 20% | — | — | — |
| PET-TPA, continuous | 6,090 | 2,400 | 40% | 6,090 | 2,200 | 36% |
| PET-TPA, batch [a] | 1,310 | >6 | >1% | 1,310 | >6 | >1% |
| PET-DMT, continuous | 4,480 | 2,330 | 52% | 3,190 | 1,810 | 57% |
| PET-DMT, batch | 8,400 | 4,950 | 59% | 3,380 | 2,870 | 85% |
| Nitrile | 30 | 10 | 33% | — | — | — |
| Totals [b] | 24,780 | 11,750 | 47% | 14,920 | 7,395 | 50% |

— No new growth projected, therefore no impacts expected.
[a] A portion of the emission reductions for this subcategory are confidential business information.
[b] Total values are affected by the subcategories for which some data are confidential business information.

*C. Non-Air Impacts*

The proposed standards are not expected to generate any adverse water impacts. Depending on the methods selected to comply with the proposed prohibition of cooling tower water in contact condensers, the amount of wastewater generated at PET facilities could decrease.

The proposed standards are not expected to increase the generation of solid waste at any Group IV thermoplastic facility.

*D. Energy Impacts*

Energy impacts include increased energy use (fuel) for the operation of control equipment, energy credits attributable to the prevention of organic HAP emissions from equipment leaks, and emissions of particulates, sulfur dioxides (SOx), and nitrogen oxide (NOx) (secondary air impacts) associated with increased energy use. Under today's proposed rule, energy use is expected to increase by approximately 30,000 barrels of oil per year for existing sources and 44,000 for new sources. The emissions of secondary air pollutants associated with this energy increase are 70 Mg/yr for existing sources and 80 Mg/yr for new sources. At the same time, energy credits attributable to the prevention of organic HAP emissions from equipment leaks are approximately 17,000 barrels of oil per year for existing sources and 8,000 for new sources. This results in a net increase of approximately 13,000 barrels of oil per year for existing sources and 36,000 for new sources.

These figures are related to the control of process vents, wastewater operations, and equipment leaks. Energy impacts related to storage vessels were not estimated since many storage vessels would be controlled through the use of internal floating roofs which do not have any associated energy impacts. Further, the estimates above do not include the projected energy savings associated with control of emissions from process contact cooling towers and vacuum system wastewater associated with the manufacture of PET. The majority of existing vacuum systems are operated with steam jets, which are very energy intensive. The precise affect of the proposed rule on the use of steam jets cannot be predicted with accuracy. However, it is anticipated by the EPA that compliance with the proposed rule will, in almost all cases, decrease the energy demand of the vacuum systems.

Given the relatively small energy impacts projected for the control of process vents, wastewater operations, and equipment leaks and the projected energy savings associated with control of vacuum system air emissions, the EPA has judged the energy impacts associated with today's proposed rule to be acceptable.

*E. Cost Impacts*

Cost impacts include the capital costs of new control equipment, the cost of energy (supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the proposed standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction. Table 12 presents the estimated capital and annual costs and average cost effectiveness by subcategory.

TABLE 12.—SUMMARY OF COST IMPACTS

| Subcategory | Existing sources | | | New sources | | |
|---|---|---|---|---|---|---|
| | Total capital cost, $1000 | Total annual costs, $1000/yr | Average cost-effectiveness ($/Mg) | Total capital cost, $1000 | Total annual costs, $1000/yr | Average cost-Effectiveness ($/Mg) |
| ABS, continuous mass | 210 | 100 | 550 | 150 | 38 | 430 |
| ABS, continuous emulsion [a] | >3,540 | >1,300 | <7,160 | >3,490 | >1,730 | <14,970 |
| ABS, batch emulsion | 430 | 310 | 5,550 | 18 | 14 | 960 |
| ABS, batch suspension | 28 | 19 | 3,570 | 28 | 19 | 3,760 |
| ABS, latex | 0.5 | −0.5 | −240 | — | — | — |
| SAN, continuous | 450 | 160 | 2,520 | 180 | 38 | 1,490 |
| SAN, batch | 80 | 33 | 2,520 | 1 | −1.3 | −210 |
| ASA/AMSAN | 550 | 200 | 2,150 | — | — | — |
| MABS [a] | 90 | >−2 | >−50 | — | — | — |
| MBS | 550 | 360 | 2,720 | 440 | 234 | 14,200 |
| Polystyrene, continuous | 770 | 280 | 260 | 200 | 90 | 350 |
| Polystyrene, batch | 300 | 160 | 1,270 | — | — | — |
| Expandable polystyrene | 110 | 50 | 540 | — | — | — |
| PET-TPA, continuous | 40,790 | 2,970 | 1,230 | 2,160 | −3,926 | −1,770 |
| PET-TPA, batch [a] | >30 | >18 | <3,180 | >30 | >18 | <3,180 |
| PET-DMT, continuous | 28,250 | 3,010 | 1,300 | 2,200 | −970 | −540 |
| PET-DMT, batch | 22,080 | 3,360 | 680 | 1,440 | −38 | −13 |
| Nitrile | 9 | 7 | 660 | — | — | — |
| Totals [b] | 98,270 | 12,330 | 1,050 | 10,340 | −2,750 | −370 |

—No new growth projected, therefore no impacts expected.
[a] A portion of the costs and/or emission reductions for this subcategory are confidential business information.
[b] Total values are affected by the subcategories for which some data are confidential business information.

Under the proposed rule, it is estimated that total capital costs for existing sources would be $98 million (1989 dollars), and total annual costs would by $12.3 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the proposed rule would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Since the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices could be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

*F. Economic Impacts*

The economic impact analysis for the selected regulatory alternatives shows that the estimated price increases for the affected chemicals range from 0.1 percent for nitrile to 2.8 percent for SAN. Estimated decreases in output range from 0.1 percent for polystyrene to 4.6 percent for SAN. Net annual exports (exports minus imports) are predicted to decrease by an average of 2.5 percent.

As many as five PET facilities and one ABS facility are at risk of discontinuing PET and ABS production, respectively, due to the burden of compliance with the standard. This does not mean that the facilities affected face the risk of closure. The facilities affected will continue to produce other chemicals whose processes are not affected by this standard.

Three assumptions in the analysis likely lead to an overestimate of the number of facilities at risk of discontinuing production of affected chemicals. First, the economic analysis model assumes that all PET and ABS facilities compete in a national market, though in reality some facilities may be protected from some competitors by regional or local trade barriers.

Second, it is assumed that the facilities with the highest control cost per unit of production also have the highest baseline production costs per unit. This assumption may not always be true since the baseline production costs per unit are not known, and thus the estimated number of facilities that would discontinue production of affected chemicals may be too high.

Third, for the production of PET, the selected regulatory alternative includes the control of organic HAP emissions from the vacuum system and process contact cooling tower. Control of these emissions is the highest cost item in the selected regulatory alternative and is the biggest contributor to the risk of facilities discontinuing PET production. The economic analysis is based on the use of ethylene glycol jets to control these emissions. There are a number of potential control technologies for these emissions that are expected by the EPA to have lower costs, but costs for these control technologies were not calculated. Ethylene glycol jets are being used by at least two facilities and data were available from one facility. The EPA has and will continue to investigate other control technologies for control of these emissions. The EPA invites comment and data on other control technologies.

More detailed information concerning the economic impacts and analysis are included in the Regulatory Impacts Analysis document (Docket No. A–92–45, Category II–B).

## VII. Administrative Requirements

*A. Public Hearing*

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentation on the proposed standards for ABS, SAN, MABS, MBS, polystyrene, PET, and nitrile production should contact the EPA at the address given in the **ADDRESSES** section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the **ADDRESSES** section

of this preamble and should refer to Docket No. A–92–45.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

*B. Docket*

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of the proposed rule. The principal purposes of the docket are:

(1) To allow interested parties to readily identify and locate documents so that they can intelligently and 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)).

*C. 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 Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

Pursuant to the terms of the Executive Order, the OMB has notified the EPA that it considers this a ''significant regulatory action'' within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

*D. Enhancing the Intergovernmental Partnership Under Executive Order 12875*

In compliance with Executive Order 12875, we have involved State, local, and tribal governments in the development of this rule. These governments are not directly impacted by the rule; i.e. they are not required to purchase control systems to meet the requirements of the rule. However, they will be required to implement the rule; e.g. incorporate the rule into permits and enforce the rule. They will collect permit fees which will be used to offset the resource burden of implementing the rule. Two representatives of the State governments have been members of the EPA Work Group developing the rule. The Work Group has met numerous times, and comments have been solicited from the Work Group members, including the State representatives. Their comments have been carefully considered in the rule development. In addition, all States are encouraged to comment on this proposed rule during the public comment period, and the EPA intends to fully consider these comments in the final rulemaking.

*E. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by the EPA (ICR No. 1737.01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW (2136), Washington, DC 20460, or by calling (202) 260–2740. The public reporting burden for this collection of information is estimated to average 938 hours per response per year, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U. S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*F. Regulatory Flexibility Act*

The Regulatory Flexibility Act (or RFA, Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A ''substantial number'' of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a thermoplastic producing firm is classified as a small entity if it has less than 750 employees, and is unaffiliated with a larger entity. Based upon this criterion, only one firm employs less than 750 workers.

Data were available to examine two of the criteria: the potential for closure, and a comparison of compliance costs as a percentage of sales.

For criterion one, the affected source is not expected to fall at risk of closure from the regulation, thus this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the affected source, and this does not meet criterion two.

The affected firm is an MBS producer, and since the economics analysis lead to the conclusion that no MBS facilities are at risk of closure, this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the firm.

In conclusion, and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. The basis for the certification is that the economic impacts for small entities do not meet or exceed the criteria in the

Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section near the beginning of this preamble).

*G. Miscellaneous*

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technical issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health and environmental risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 15, 1995.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 95–7066 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–P**

## 40 CFR Part 180

**[PP 3F4233/P609; FRL–4944–7]**

**RIN 2070–AC18**

## Bromoxynil; Pesticide Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes a tolerance for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile), resulting from the application of its octanoic and heptanoic acid esters. The proposal would amend the tolerance in or on the raw agricultural commodity (RAC) cottonseed (transgenic BXN varieties only) at 0.04 part per million (ppm). Rhone-Poulenc AG Co. submitted petitions requesting EPA to establish the maximum permissible residue of the herbicide in or on transgenic cottonseed.

**DATES:** Written comments, identified by the document control number, [PP 3F4233/P609], must be received on or before April 28, 1995.

**ADDRESSES:** By mail, submit comments to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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 address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Environmental Protection Agency, 401 M. St., SW., Washington, DC 20460. Office location and telephone number: Rm., 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800; e-mail: Taylor.Robert@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** EPA issued a notice, published in the **Federal Register** of October 21, 1993 (58 FR 54354), announcing that the Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide petition, PP 3F4233, to EPA proposing to amend 40 CFR 180.324 by establishing a regulation to permit the residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from the application of its octanoic and heptanoic acid esters in or on the raw agricultural commodity (RAC) transgenic cottonseed at 0.04 ppm. There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data listed below were considered in support of this tolerance. Based on bridging studies, the Agency has determined that bromoxynil octanoate and bromoxynil heptanoate are toxicologically equivalent. For this reason, studies using the bromoxynil phenol are accepted in fulfillment of studies required for bromoxynil octanoate and bromoxynil heptanoate.

**Phenol technical-grade bromoxynil**

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in $LD_{50}$ = 81 mg/kg (males) and $LD_{50}$ = 93 mg/kg (females).

3. A 2-year combined feeding/carcinogenicity study was conducted with rats administered (oral) dosages of 0, 60, 190, or 600 ppm (0, 2.6, 8.2, or 28 mg/kg/day in males; 0, 3.3, 11.0, or 41 mg/kg/day in females) bromoxynil phenol in the diet. In males the no-observed-effect-level (NOEL) for systemic toxicity is 2.6 mg/kg/day, and the lowest-effect-level (LEL) is 8.2 mg/kg/day. In females, the NOEL is 3.3 mg/kg/day, and the lowest-effect-level (LEL) is 11.0 mg/kg/day. This study did not demonstrate any increase in tumor incidences in either male or female rats. This study has not been considered by the RfD committee. The RfD was set based on the NOEL from the supplementary rat study (see item #4).

4. A 2-year combined feeding/carcinogenicity study was conducted with rats administered bromoxynil phenol in the diet at dose levels of 0, 10, 30, or 100 ppm (0, 0.5, 1.5, or 5 mg/kg/day). In both males and females, the NOEL and LOEL for systemic toxicity was 5 mg/kg/day and >5 mg/kg/day, respectively. At the highest dose tested, increased liver weights were observed at 12 months, but not at 24 months. This study was considered negative for carcinogenicity. This study is considered supplementary. The RfD is based on this study and an uncertainty factor of 300 rather than 100 was used since the study is supplementary.

5. A 1-year oral study was conducted with dogs administered bromoxynil phenol at dose levels of 0, 0.1, 0.3, 1.5, or 7.5 mg/kg/day in capsules. The NOEL is 0.3 mg/kg/day and the LEL is 1.5 mg/kg/day in both males and females.

6. An 18-month carcinogenicity study was conducted with mice administered bromoxynil phenol at dose levels of 0, 10, 30, or 100 ppm (0, 1.3, 3.9, or 13 mg/kg/day) in the diet. For males, dose-related increases in hyperplastic nodules and liver adenomas/carcinomas were observed which were statistically significant at the 13-mg/kg/day dose level. Increased relative liver weights

were also observed. In females, increased absolute liver weights and relative liver and kidney weights were observed. The study was considered negative for carcinogenicity for females.

7. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 4, 12.5, or 40 mg/kg/day. The maternal NOEL and LEL are 12.5 mg/kg/day and 40 mg/kg/day, respectively. The developmental NOEL and LEL are 4 mg/kg/day and 12.5 mg/kg/day, respectively.

8. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 5, 15, or 35 mg/kg/day. The maternal NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively. The fetotoxicity and developmental NOEL and LEL are less than 5 mg/kg/day and 5 mg/kg/day, respectively.

9. A developmental toxicity study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.7, 5, or 15 mg/kg/day. The maternal NOEL and LEL is 5 mg/kg/day and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively.

10. A developmental toxicity study was conducted with rabbits administered (orally) bromoxynil phenol at dose levels of 0, 15, 30, or 60 mg/kg/day. The maternal NOEL and LEL are 15 mg/kg/day and 30 mg/kg/day, respectively. The developmental NOEL and LEL are less than 15 mg/kg/day and 15 mg/kg/day, respectively.

11. A developmental toxicity study was conducted with mice administered (orally) bromoxynil phenol at dose levels of 0, 11, 32, or 96 mg/kg/day. The maternal NOEL and LEL are 11 mg/kg/day and 32 mg/kg/day, respectively. The developmental NOEL and LEL are 32 mg/kg/day and 96 mg/kg/day, respectively.

12. A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 0.8, 4, or 21 mg/kg/day in the diet. The systemic adult rat NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day. The reproductive NOEL is 21 mg/kg/day, and the LEL is greater than 21 mg/kg/day. The postnatal developmental NOEL is 4 mg/kg/day, and the LEL is 21 mg/kg/day.

13. A reproduction study was conducted with rats administered (orally) bromoxynil phenol at dose levels of 0, 1.5, 5, or 15 mg/kg/day in the diet. The systemic adult rat NOEL is 1.5 mg/kg/day (tentative), and the LEL is 5 mg/kg/day (tentative). The reproductive NOEL is 15 mg/kg/day, and the LEL is greater than 15 mg/kg/day. The offspring developmental NOEL is 5 mg/kg/day, and the LEL is 15 mg/kg/day.

14. Mutagenicity data included unscheduled DNA synthesis study—rat primary hepatocytes (negative); in vitro transformation assay—mouse cells (negative); sister chromosomal exchange study—CHO cells (negative); forward mutation study—mouse lymphoma cells (negative without activation and positive with activation); DNA repair test—E. coli (positive); in vitro chromosomal aberration (negative without activation and positive with activation); two separate micronucleus assays (both negative); forward mutation—CHO cells (negative); and Ames study Salmonella typhimurium (negative with and without activation).

**Heptanoate technical-grade bromoxynil**

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in $LD_{50}$ = 362 mg/kg (males) and $LD_{50}$ = 292 mg/kg (females).

3. A general metabolism study was conducted with rats, and the results were similar when a single low dose (2 mg/kg), a single high dose (20 mg/kg) or a low dose (2 mg/kg/day) administered for 14 consecutive days were administered. Bromoxynil heptanoate is rapidly absorbed and widely distributed in most tissues. The highest concentrations were found in the blood, plasma, liver, kidney, and thyroid. Higher tissue concentrations were found in females than in males. Excretion was more rapid in males. Most of the radioactivity was excreted in the urine, mostly in the form of bromoxynil phenol. Bromoxynil phenol and bromoxynil heptanoate were present in the feces. There was no significant retention in tissues after 7 days. Essentially, bromoxynil heptanoate was metabolized to bromoxynil phenol via ester hydrolysis.

**Octanoate technical-grade bromoxynil**

1. Several acute toxicology studies were performed, placing technical-grade bromoxynil in toxicity Category II.

2. An acute oral toxicity study in rats resulted in $LD_{50}$ = 400 mg/kg (males) and $LD_{50}$ = 238 mg/kg (females).

3. A 13-week oral study was conducted with rats administered bromoxynil octanoate at dose levels of 0, 150, 600, or 1,100 ppm (0, 11, 45, or 91 mg/kg/day in males; 0, 13, 55, or 111 mg/kg/day in females) in the diet. This is equivalent to 0, 8, 31, or 63 mg/kg/day in males; 0, 9, 38, or 77 mg/kg/day in females of bromoxynil phenol. The NOEL and LEL in males are 31 mg/kg/day and 63 mg/kg/day, respectively. In females, the NOEL and LEL are 9 mg/kg/day and 38 mg/kg/day, respectively.

4. A developmental toxicity study was conducted with rats administered (orally) bromoxynil octanoate at dose levels of 0, 2.4, 7.3, or 21.8 mg/kg/day. This is equivalent to 0, 1.7, 5, or 15 mg/kg/day of bromoxynil phenol. The maternal NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively. The developmental NOEL and LEL are 5 mg/kg/day and 15 mg/kg/day, respectively.

5. Mutagenicity data included the following: the Ames study—Salmonella typhimurium (negative with and without activation); micronucleus assay (negative); and unscheduled DNA synthesis—rat primary hepatocytes (negative).

**Carcinogenicity Peer Review Committee/SAP**

The Scientific Advisory Panel met on June 25, 1992, to review the scientific issues regarding the Carcinogenicity Peer Review Committee's classification of bromoxynil as a Group C carcinogen and recommended that a low- dose extrapolation model, applied to the experimental animal tumor data, be used for quantification ($Q_1$*) of human risk. The Panel felt that a Group D classification was more consistent with the existing data base. The SAP concluded that the available data did not provide sufficient evidence to classify bromoxynil as Group C and recommended a Group D classification pending completion of the ongoing mouse carcinogenicity study. The SAP further recommended that the mouse study be extended beyond 18 months (e.g., 24 months) if survival was adequate and that contemporary historical control data be made available at the time of evaluation.

After the SAP meeting the Carcinogenicity Peer Review Committee met on July 29, 1992, to further discuss and evaluate the weight-of-the-evidence on bromoxynil with particular reference to its carcinogenic potential. The Peer Review Committee (PRC) concluded that the classification of bromoxynil as a Group C, possible human carcinogen, should be maintained and recommended that for the purpose of risk characterization the Reference Dose (RfD) methodology should be used at this time. The PRC also placed a condition on the decision to defer utilization of a $Q_1$*. The condition was that additional uses should not be granted prior to analysis of the new mouse study. The PRC agreed that the results of the new mouse cancer study were critical to the ultimate classification and dose-response

assessment. Since the conditional registration involves a new use, HED has determined that it is prudent to apply the $Q_1$* to existing data.

**Nature of the Residue and Analytical Method**

The nature of the residue in transgenic cotton is considered to be adequately understood. The primary bromoxynil metabolite in transgenic cotton is 3,5-dibromo-4-hydroxybenzoic acid (DBHA). DBHA is only a major metabolite in/on bromoxynil treated transgenic cotton. For the purposes of a time-limited tolerance, only the parent compound will be regulated as in 40 CFR 180.324. This interim decision is based on the minimal risk resulting from total residues of the parent and metabolite in cottonseed contributing only about 1/1000th to the total dietary exposure from all registered uses of bromoxynil.

Adequate methodology is available for enforcement purposes, based upon methods for the parent compound. The method is a modified version of Method I in the Pesticide Analytical Manual (PAM), Vol. II. The method involves sample reflux in methanolic KOH, partitioning with ether/hexane, concentration of the organic phase, derivatization with diazomethane and analysis by GC. The limit of detection (LOD) for this method is 0.02 ppm.

The nature of the residue in ruminants and poultry is considered to be adequately understood. Any secondary residues occurring in the fat, meat, and meat byproducts of cattle, goats, horses, poultry, and sheep will be covered by existing tolerances.

**Risk Assessment**

The reference dose (RfD) (acceptable daily intake (ADI)) for bromoxynil is calculated to be 0.02 mg/kg body weight/day based on a 2-year rat chronic feeding study with a NOEL of 5.0 mg/kg bwt/day and a safety factor of 300. The theoretical maximum residue contribution (TMRC) for published tolerances is 0.450 ug/kg bwt/day or 2.25% of the RfD for the overall U.S. population. The use on transgenic cotton would contribute less than 0.0004 *u*g/kg bwt/day representing approximately 1/1000 of the total dietary exposure to bromoxynil residue. This analysis comparing the dietary exposure from bromoxynil to the noncarcinogenic chronic effects results in a negligible chronic risk.

Although the new mouse study has been received, a full review by the Agency has not been completed at this time. Therefore, an estimate of the upper-bound carcinogenic risk has been estimated based on published tolerances and the previously determined upper bound potency factor ($Q_1$* = 4.1 X $10^{-1}$ $(mg/kg/day)^{-1}$). The resulting upper-bound cancer risk was found to be 2 X $10^{-4}$. An additional cancer risk as a result of the use of bromoxynil on transgenic BXN cotton would be 2 X $10^{-7}$, which is incrementally insignificant. The $10^{-4}$ risk includes the assumption that residues were present in or on every commodity at tolerance level and that one hundred percent of the acreage for every commodity was treated with bromoxynil. Thus, this cancer risk should be viewed as an unrealistic ''worst case'' estimate. The risk resulting from the use of bromoxynil on transgenic cotton alone will be negligible.

Based on the above information cited, the Agency has determined that the establishment of the tolerance by amending 40 CFR part 180 will protect the public health. Therefore, the tolerance is established as set forth below.

The tolerance will expire on April 1, 1997. Based upon the evaluation of a mouse carcinogenicity study currently under review and submission of an analytical method, residue data and livestock metabolism study on the metabolite, the Agency will determine whether establishing permanent tolerances is appropriate. Residues remaining in or on the raw agricultural commodity after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term, and in accordance with the provisions of the conditional registration.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 8F3671/609]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this regulation from section 3 of Executive Order 12866.

Pursuant to requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

Therefore, it is proposed that part 180 be amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.324, by adding new paragraph (d), to read as follows:

**§ 180.324 Bromoxynil; tolerances for residues.**

* * * * *

(d) Tolerances are established for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic and heptanoic acid esters in or on the following raw agricultural commodity:

| Commodity | Parts per million | Expiration date |
|---|---|---|
| Cottonseed (transgenic BXN varieties only) ..... | 0.04 ..... | April 1, 1997 |

[FR Doc. 95–7714 Filed 3–28–95; 8:45 am]
**BILLING CODE 6560–50–F**

# Notices

**Federal Register**

Vol. 60, No. 60

Wednesday, March 29, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

March 24, 1995.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number(s), if applicable; (4) Who will be required or asked to report; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

**Extension**

• Food and Consumer Service
Annual Report of State Revenue Matching
FCS–13
State, Local or Tribal Government; 57 responses; 4,560 hours
Alan Rich (703) 305–2113

**Reinstatement**

• Rural Utilities Service
Financial and Statistical Report for Telephone Borrowers
REA 479
Individual or households; Business or other for-profit; Not-for-profit institutions; 900 responses; 7,740 hours
Jonathan Claffey (202) 720–9539

• Rural Utilities Service
RUS Policy on Audits of Electric and Telephone Borrowers
Individuals or households; Business or other for-profit; Not-for-profit institutions; 3,872 responses; 20,330 hours
Roberta Purcell (202) 720–5227

**Larry K. Roberson,**

*Deputy Departmental Clearance Officer.*

[FR Doc. 95–7722 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–01–M

## Agricultural Research Service

### Notice of Intent to Grant Exclusive License

**AGENCY:** Agriculture Research Service, USDA.

**ACTION:** Notice of Intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Forest Service intends to grant to Schell Electronics, Inc., having a place of business in Chanute, Kansas, an exclusive license to Serial Number 08/078,341, filed June 21, 1993, ''Method of Controlling Animals with Electronic Fencing''. Notice of Availability was published in the **Federal Register** on September 24, 1993.

**DATES:** Comments must be received on or before May 28, 1995.

**ADDRESSES:** Send comments to: Janet I. Stockhausen, USDA, Forest Service, Forest Products Laboratory, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398.

**FOR FURTHER INFORMATION CONTACT:** Janet I. Stockhausen at the address given above, Telephone: (608) 231–9502.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published notice, the Forest Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 25 U.S.C. 209 and 37 CFR 404.7.

**Richard M. Parry, Jr.,**

*Assistant Administrator.*

[FR Doc. 95–7725 Filed 3–28–95; 8:45 am]

BILLING CODE 3410–03–M

## Grain Inspection, Packers and Stockyards Administration

### Deposting of Stockyards

Notice is hereby given, that the livestock markets named herein, originally posted on the dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under the Act and are therefore, no longer subject to the provisions of the Act.

| Facility No., name, and location of stockyard | Date of posting |
|---|---|
| AL–169 Northeastern Alabama Feeder Pig Association, Inc., Section, Alabama. | May 22, 1987. |
| AL–172 Northwest Alabama Feeder Pig Association, Russellville, Alabama. | June 8, 1987. |
| AL–174 Central Alabama Feeder Pig Association, Clanton, Alabama. | May 27, 1987. |
| TX–329 San Augustine Livestock Auction, Inc., San Augustine, Texas. | July 16, 1984. |

This notice is in the nature of a change relieving a restriction and, thus, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure. This notice is given pursuant to section 302 of the Packers and Stockyards Act (7 U.S.C. 202) and is effective upon publication in the **Federal Register**.

Done at Washington, DC, this 23rd day of March 1995.

**Daniel L. Van Ackeren,**

*Acting Director, Livestock Marketing Division.*

[FR Doc. 95–7726 Filed 3–28–95; 8:45 am]

BILLING CODE 3210–KD–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–836]**

### Antidumping Duty Order: Glycine From the People's Republic of China

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

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Sue Strumbel or Kristie Strecker, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1442 or (202) 482–3174, respectively.

**Scope of Order**

The product covered by this proceeding is glycine which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the *Harmonized Tariff Schedule of the United States* (HTSUS). This proceeding includes glycine of all purity levels.

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

**Antidumping Duty Order**

In accordance with section 735(a) of the Tariff Act of 1930, as amended (''the Act''), on January 23, 1995, the Department of Commerce (''the Department'') made its final determination that glycine from the People's Republic of China (''PRC'') is being sold at less than fair value (60 FR 5620, January 23, 1995). On March 14, 1995, the U.S. International Trade Commission (''ITC'') notified the Department of its final determination, pursuant to section 735(b)(1)(A)(ii) of the Act, that an industry in the United States is threatened with material injury by reason of imports of the subject merchandise. Additionally, pursuant to section 735(b)(4)(B) of the Act (19 U.S.C. 1673d(b)(4)(B)), the ITC examined whether material injury would have been found ''but for'' the suspension of liquidation of the merchandise. Of the votes in the ITC's final determination (Publication 2863), three constitute an affirmative ''but for'' finding, and two constitute a negative ''but for'' finding. *MBL (USA) Corp. v. the United States*, 787 F.Supp. 202 (CIT 1992). One Commissioner stated that the ''but for'' finding was moot because there are no imports that could be affected by a ''but for'' determination. Based on the three affirmative votes, we have determined that the ITC made an affirmative ''but for'' finding. Even if the non-voting commissioner voted negative on ''but for'', we would consider the ''but for'' vote affirmative, in accordance with the tie vote rule. 19 US.C 1677 (11).

When the ITC finds threat of material injury, and there is an affirmative ''but for'' finding, the ''General Rule'' provision of section 736(b)(1) of the Act applies. Therefore, in accordance with section 736 of the Act, the Department will direct United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of glycine from the PRC. According to the ''General Rule'' these antidumping duties will be assessed on all unliquidated entries of glycine from the PRC entered or withdrawn from warehouse, for consumption, on or after November 16, 1994, the date on which the Department published its preliminary determination notice in the **Federal Register** (59 FR 59211).

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

| Manufacturer/Producer/Exporter | Weighted-average margin percentage |
|---|---|
| All Companies ..... | 155.89 |

This notice constitutes the antidumping duty order with respect to glycine from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: March 22, 1995.

**Susan G. Esserman,**

*Assistant Secretary for Import Administration.*

[FR Doc. 95–7727 Filed 3–28–95; 8:45 am]

**BILLING CODE 3510–DS–P**

### National Oceanic and Atmospheric Administration

**[I.D. 031495B]**

### Marine Mammals

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

**ACTION:** Issuance of scientific research permit no. 945 (P319D).

**SUMMARY:** Notice is hereby given that Dr. Randall S. Wells, Dolphin Biology Research Institute, c/o Mote Marine Laboratory, 1600 Thompson Parkway, Sarasota, FL 34236, has been issued a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

**ADDRESSES:** The permit 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); and

Director, Southeast Region, NMFS, NOAA, 9721 Executive Center Drive, North; St. Petersburg, FL 33702 (813/570–5312).

**SUPPLEMENTARY INFORMATION:** On February 15, 1995, notice was published in the **Federal Register** (60 FR 8640) that a request for a scientific research permit to take bottlenose dolphins (*Tursiops truncatus*) had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: March 21, 1995.

**Ann D. Terbush,**

*Chief, Permits & Documentation Division, National Marine Fisheries Service.*

[FR Doc. 95–7679 Filed 3–28–95; 8:45 am]

**BILLING CODE 3510–22–F**

**[I.D. 031495D]**

### Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Modification no. 1 to scientific research permit no. 838 (P535).

**SUMMARY:** Notice is hereby given that a request for modification of scientific research permit no. 838 submitted by Stephen J. Insley and Peter Marler, Animal Communication Laboratory, University of California, Davis, CA 95616–8761, 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, 1335 East-West Highway, Suite 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Alaska Region, NMFS, Federal Annex, P.O. Box 21668, Juneau, AK 99802 (907/586–7221).

**SUPPLEMENTARY INFORMATION:** On January 20, 1995, notice was published in the **Federal Register** (60 FR 4148) that a modification of permit no. 838, issued May 17, 1993 (58 FR 29810), had been requested by the above-named individuals. 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.*) and the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit no. 838 authorizes scientific research on up to 210 northern fur seals (*Callorhinus ursinus*). Of these, up to 100 fur seals (50 females/50 pups) may be bleach marked and tagged with plastic All-Flex tags or metal monel tags and up to 110 fur seals may be inadvertently harassed over a 2-year period. The permit was modified to extend the period of validity to December 31, 1996, and increase the number of animals that may be inadvertently harassed to 150 over a 4-year period.

Dated: March 23, 1995.

**Ann D. Terbush,**

*Chief, Permits & Documentation Division, National Marine Fisheries Service.*

[FR Doc. 95–7680 Filed 3–28–95; 8:45 am]

**BILLING CODE 3510–22–F**

## COMMISSION OF FINE ARTS

### Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for 20 April 1995 at 10 am in the Commission's offices in the Pension Building, Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001 to discuss various projects affecting the appearance of Washington, D.C., including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 21 March 1995.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 95–7643 Filed 3–28–95; 8:45 am]

**BILLING CODE 6330–01–M**

## DEPARTMENT OF DEFENSE

### Corps of Engineers

### Proposal To Issue a Nationwide Permit

**AGENCY:** Corps of Engineers, DoD.

**ACTION:** Correction.

**SUMMARY:** This document contains a correction to a proposal to issue a new nationwide permit which was published in the **Federal Register** on Thursday, March 23, 1995, (60 FR 15439–15443). On page 15440, in the third column, paragraph d. should be replaced with the following language:

d. The discharge is part of a single and complete project and that for any subdivision created or subdivided after March 6, 1995, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ½ acre for the entire subdivision.

Dated: March 23, 1995.

**Michael L. Davis,**

*Chief, Regulatory Branch, Operations, Construction and Readiness Division, Directorate of Civil Work.*

[FR Doc. 95–7649 Filed 3–28–95; 8:45 am]

**BILLING CODE 3710–92–M**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by March 31, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

**Kent Hannaman,**

*Acting Director, Information Resources Group.*

### Office of Educational Research and Improvement

*Type of Review* Expedited

*Title*: Fast Response Survey System—School Survey on Racial and Ethnic Classifications
*Frequency*: One time
*Affected Public*: Individuals or households
*Reporting Burden*:
*Responses*: 900
*Burden Hours*: 450
*Recordkeeping Burden*:
*Recordkeepers*: 0
*Burden Hours*: 0
*Abstract*: This sample survey of approximately 1,000 public school principals requests data on current procedures used by schools to collect information on student's race/ethnicity, how schools report this information for federal purposes, and the extent to which the five standard federal categories adequately describe the school's current population. The survey is part of a federal-government-wide review process being conducted by the Office of Management and budget (OMB). Information from the survey will be used to evaluate and assess proposed changes and revisions to the five standard categories currently used and issued 17 years ago by OMB.

Additional Information: Clearance for this information collection is requested for March 31, 1995. The survey must be started by April 7, 1995 to allow the eight weeks needed to administer it before the public school year closes. The survey must be administered this year to remain within deadlines imposed by the testing program for the Year 2000 Census.

[FR Doc. 95–7654 Filed 3–28–95; 8:45 am]
**BILLING CODE 4000–01–M**

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 1, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, DC. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

**Kent Hannaman,**

*Acting Director, Information Resources Group.*

### Office of Elementary and Secondary Education

*Type of Review:* Expedited
*Title:* Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations
*Frequency:* Annually
*Affected Public:* Business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Governments
*Reporting Burden:*
*Responses:* 9
*Burden Hours:* 45
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* Federally recognized Indian tribes and tribal organizations are required to submit continuation applications to the Secretary to operate the Even Start program.

Additional Information: Clearance for this information collection is requested for April 1, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7655 Filed 3–28–95; 8:45 am]
**BILLING CODE 4000–01–M**

## Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by April 15, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement

for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice

Dated: March 23, 1995.

**Kent Hannaman,**

*Acting Director, Information Resources Group.*

### Office of Educational and Research Improvement

*Type of Review:* Expedited
*Title:* Opportunity-to-Learn Development Grants
*Frequency:* Annually
*Affected Public:* Not-for-profit institutions; State, Local or Tribal Governments
*Reporting Burden:*
*Responses:* 5
*Burden Hours:* 3,200
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* This information will be used by the Department of Education, Office of Educational Research and Improvement to determine eligibility, select applicants for funding, and determine budgetary amounts. The respondents will be consortia as described in the statute organized to compete for this grant program

Additional Information: Clearance for this information collection is requested for April 15, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7656 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–M

## Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Acting Director, Information Resources Group, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

**DATES:** An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) was requested by March 24, 1995.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street NW., Room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. Sherrill, (202) 708–9915. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 3517) requires that the Director of OMB provide interested Federal agencies and person an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violates State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Information Resources Group, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review has been requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: March 23, 1995.

**Kent Hannaman,**

*Acting Director, Information Resources Group.*

### Office of Elementary and Secondary Education

*Type of Review:* Expedited
*Title:* Preliminary State Consolidated Plan
*Frequency:* One time
*Affected Public:* State, Local or Tribal Governments
*Reporting Burden:*
*Responses:* 57
*Burden Hours:* 11,172
*Recordkeeping Burden:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* An alternative method for applying certain program funds in a consolidated manner by a state educational agency.

Additional Information: Clearance for this information collection was requested for March 24, 1995. An expedited review is requested in order to implement the program before the start of the new year.

[FR Doc. 95–7657 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–M

## Office of Postsecondary Education; State Student Incentive Grant Program

**AGENCY:** Department of Education.

**ACTION:** Notice of the Closing Date for Receipt of State Applications for Fiscal Year 1995.

**SUMMARY:** The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1995 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the

Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Republic of Palau. Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c-1070c-4)

Closing Date for Transmittal of Applications: An application for fiscal year 1995 SSIG funds must be mailed or hand-delivered by April 28, 1995.

Application Form: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Pell and State Grant Section, Room 3053, ROB–3, U.S. Department of Education, Student Financial Assistance Programs, 600 Independence Avenue, SW., Washington, DC 20202–5447.

The Secretary will accept the following proof of mailing: (1) a legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use registered or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1995 funding.

Application Delivered by Hand: An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, SW., Room 3053, General Service Administration Regional Office Building #3, Washington, DC Hand-delivered applications will be accepted between 8:00 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1994, 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands received funds under the SSIG Program.

*Applicable Regulations:* The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Mr. Greg Gerrans, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, DC 20202–5447; telephone (202) 708–4607. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. (20 U.S.C. 1070c–1070c–4)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: March 23, 1995.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 95–7658 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–P

## President's Board of Advisors on Historically Black Colleges and Universities; Meeting

**AGENCY:** President's Board of Advisors on Historically Black Colleges and Universities, Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and agenda of the initial meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

**DATE AND TIME:** April 11, 1995, from 9:30 a.m. to 4 p.m. and April 12, 1995, from 9:00 a.m. to 12:00 p.m.

**ADDRESSES:** The meeting will be held at the Sheraton City Centre Hotel & Towers located at 1143 New Hampshire Avenue, NW. Call (202) 708–8667 for current information.

**FOR FURTHER INFORMATION CONTACT:** Nancy Davis, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 600 Independence Avenue, SW, The Portals Building, Suite 605, Washington, DC 20202–5120. Telephone: (202) 708–8667.

**SUPPLEMENTARY INFORMATION:** The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 12876 of November 1, 1993. The Board is established to advise on the financial stability of Historically Black Colleges and Universities, to issue an annual report to the President on HBCU participation in Federal programs, and to advise the Secretary of Education on increasing the private sector role in strengthening HBCUs.

The meeting of the Board is open to the public. The meeting will be primarily devoted to presentations by agency heads on efforts to implement Executive Order 12867.

Records are kept of all Board proceedings, and are available for public inspection at the White House Initiative

on Historically Black Colleges and Universities located at 1250 Maryland Avenue, SW., The Portals Building, Suite 605, Washington, DC 20202, from the hours of 8:30 am to 5:00 pm.

Dated: March 21, 1995.

**David A. Longanecker,**

*Assistant Secretary for Postsecondary Education.*

[FR Doc. 95–7702 Filed 3–28–95; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Advisory Committee on External Regulation of Department of Energy Nuclear Safety

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the second meeting of the Advisory Committee on External Regulation of Department of Energy Nuclear Safety.

**DATE AND TIMES:** The committee will first tour the Rocky Flats Environmental Technology Site on the morning of Thursday, April 13, 1995. A public comment session will follow at 11:15 am to 12:00 pm and will be conducted at the United States Department of Energy Rocky Flats Field Office, Building 60, Highway 93, Golden, CO 80404. The Committee meeting will begin at 1:30 pm at the Holiday Inn Denver Northglenn followed by a second public comment session at 6:30 pm. The Friday, April 14, 1995, Committee session will be conducted from 8:00 am to 12:00 pm at the same location.

**ADDRESSES:** Holiday Inn Denver Northglenn, 10 East 120th Avenue, Northglenn, CO 80233.

**FOR FURTHER INFORMATION CONTACT:** Catherine Volk, Advisory Committee on External Regulation of Department of Energy Nuclear Safety, 1726 M Street, NW, Suite 401, Washington, DC 20036, (202)254–3826 .

**SUPPLEMENTARY INFORMATION:** Purpose of the Committee: The purpose of the Committee is to provide the Secretary of Energy, the White House Council on Environmental Quality, and the Office of Management and Budget with advice, information, and recommendations on how new and existing Department of Energy (DOE) facilities and operations, except those operations covered under Executive Order 12344 (Naval Propulsion Program), might best be regulated with regard to nuclear safety. The Department currently self-regulates many aspects of nuclear safety, pursuant to the Atomic Energy Act of 1954, as amended. The Committee consists of 24 members drawn from Federal and State government and the private sector, and is co-chaired by John F. Ahearne, Executive Director of Sigma Xi and Gerard F. Scannell, President of the National Safety Council. Members were chosen with environment, safety, and health backgrounds, balanced to represent different public, Federal, state, Tribal, and industry interests and experience.

**Purpose of the Meeting**

This is the second meeting of the Committee. The Committee will receive information from federal and state officials and focus on committee operations.

**Tentative Agenda**

The Advisory Committee meeting will focus on the regulatory framework for oversight of DOE activities. The Committee will receive presentations on regulatory practices at Rocky Flats by the DOE, contractor, state, and the Defense Nuclear Facilities Safety Board. There will also be a presentation on critiques of and options for regulation compiled by the Congressional Resource Services. The agenda will provide opportunities for public comment both at Rocky Flats after the Advisory Committee's site tour and at 6:30 pm at the Holiday Inn Denver Northglenn. A final agenda will be available at the meeting.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public are welcome to make oral statements. Those who wish to do so should contact Catherine Volk at the address or telephone number listed above. Individuals may also register on April 13, 1995 at the meeting sites. Every effort will be made to hear all those wishing to speak. Written comments are welcomed, and should be mailed to Catherine Volk, 1726 M St. NW, Suite 401, Washington, DC 20036. The Committee Co-Chairs are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

**Transcripts and Minutes**

A meeting transcript and minutes will be available for public review and copying four to six weeks after the meeting at the DOE Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. The transcript also will be made available at the Department's Field Office Reading Room locations.

Issued at Washington, DC on March 24, 1995.

**Gail Cephas,**

*Acting Deputy Advisory Committee Management Officer.*

[FR Doc. 95–7731 Filed 3–28–95; 8:45 am]

BILLING CODE 6450–01–P

## Federal Energy Regulatory Commission

**[Docket No. ER94–24–006, et al.]**

### Enron Power Marketing, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 22, 1995.

Take notice that the following filings have been made with the Commission:

**1. Enron Power Marketing, Inc.**

[Docket No. ER94–24–006]

Take notice that on March 2, 1995, Enron Power Marketing, Inc. tendered for filing a summary of its activity for the quarter ending December 31, 1994.

**2. LG&E Power Marketing, Inc.**

[Docket No. ER94–1188–004]

Take notice that on March 6, 1995, LG&E Power Marketing, Inc. tendered for filing a letter stating the summary of activity for the quarter ending December 31, 1994.

**3. Southern California Edison Co.**

[Docket No. ER94–1608–000]

Take notice that on March 8, 1995, Southern California Edison Company tendered for filing an amendment in the above referenced docket.

*Comment date:* April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

**4. Niagara Mohawk Power Corp.**

[ Docket Nos. ER95–478–000 and ER95–479–000]

Take notice that on March 1, 1995, Niagara Mohawk Power Corporation tendered for filing an amendment in the above-referenced dockets.

*Comment date:* April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

**5. Citizens Utilities Co.**

[Docket No. ES95–25–000]

Take notice that on March 17, 1995, Citizens Utilities Company (Citizens), filed an application under § 204 of the Federal Power Act seeking authorization to issue not more than 900,000 shares of common stock series B of Citizens pursuant to the provisions of Citizens Non-Employee Directors' Deferred Fee Equity Plan. Also, Citizens requests exemption from the Commission's competitive bidding and negotiated placement regulations.

*Comment date:* April 17, 1995, in accordance with Standard Paragraph E at the end of this notice.

**6. Appalachian Power Co.**

[Docket No. FA91–64–001]

Take notice that on March 21, 1995, Appalachian Power Company (APCo), tendered for filing its compliance report in the above-referenced docket. The compliance report was filed in response to the January 12, 1995, Letter Order in this docket, which order APCo to refund to its wholesale customers the time value of money related to the accounting and billing of certain railcar maintenance costs during the period January 1991 through January 12, 1992.

APCo states that a copy of the filing was served upon its wholesale customers, the Virginia State Corporation Commission, the Public Service Commission of West Virginia and the Tennessee Public Service Commission.

*Comment date:* April 5, 1995, in accordance with Standard Paragraph E at the end of this notice.

**7. Air Products and Chemicals, Inc.**

[Docket No. QF84–166–001]

On March 20, 1995, Air Products and Chemicals, Inc. (Air Chemicals) tendered for filing an amendment to its filing in this docket.

The amendment pertains to information relating to the ownership structure and technical aspects of Air Products' cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

*Comment date:* April 10, 1995, in accordance with Standard Paragraph E at the end of this notice.

**8. Scott Paper Co.**

[Docket No. QF86–557–001]

On March 16, 1995, Scott Paper Company tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership and technical characteristics of the facility.

*Comment date:* April 11, 1995, 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. 95–7660 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–P

**[Project No. 2290–006–CA]**

## Southern California Edison Company; Notice of Availability of Draft Environmental Assessment

March 23, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for new license for an existing licensed hydropower project on the Kern River owned and operated by the Southern California Edison Company: the Kern River No. 3 Project No. 2290, located in Kern and Tulare Counties, California. Subsequently, the Commission's staff prepared a Draft Environmental Assessment (DEA) that discusses the relicensing of the project.

In the DEA, staff evaluates the potential environmental impacts that would result from the continued operation of the project. Staff concludes that relicensing the project with appropriate enhancement measures would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 2290 to the first page of all comments.

For further information, please contact Kathleen Sherman, Environmental Coordinator, at (202) 219–2834.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–7659 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. CP94–151–001, et al.]**

## Panhandle Eastern Pipe Line Company, et al.; Natural Gas Certificate Filings

March 21, 1995

Take notice that the following filings have been made with the Commission:

**1. Panhandle Eastern Pipe Line Co.**

[Docket No. CP94–151–001]

Take notice that on March 16, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–151–001 a petition to amend the application filed in Docket No. CP94–151–000 to abandon by transfer to its affiliate, Panhandle Field Services Company (Field Services) the majority of the facilities for which refunctionalization from gathering to transmission was denied by the Commission's order issued February 14, 1995, pursuant to Section 7(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Panhandle states that in the February 14, 1995, order the Commission approved the refunctionalization from gathering to transmission of 50 of 168 facilities. Panhandle also notes that among the 50 refunctionalized facilities were six meters located on facilities the Commission determined to be gathering. Panhandle also states that it is requesting rehearing of the Commission's determination that six of the remaining facilities are gathering. Panhandle is then requesting authorization to abandon by transfer to Field Services a total of 116 facilities, including the six above-mentioned

meters, but not including the six facilities for which it is requesting rehearing.

Panhandle states that approval of the amended application for abandonment will facilitate the termination of its gathering function, and would eliminate the need for Panhandle to retain a gathering rate.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

**2. Panhandle Eastern Pipe Line Co.**

[Docket No. CP95–257–000]

Take notice that on March 10, 1995, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP95–257–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct, own and operate a delivery tap and associated facilities in Audrain County, Missouri for deliveries to Cerro Copper Casting (Cerro Copper), a Division of Cerro Copper Tube Co, under Panhandle's blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle proposes to construct a 2-inch hot tap, approximately 7500 feet of 3-inch pipeline and a dual 2-inch meter and regulating station on its Mexico Lateral at Station 58+00, Section 27, Township 51 North, Range 9 West in Audrain County, Missouri. This interconnect/delivery tap was requested of Panhandle by Cerro Copper for meeting the 500 Mcf of natural gas per day demand by its new copper billet casting plant still under construction. Panhandle states it understands that Cerro Copper does not have a contract with Union Electric Company, a local distribution company, to provide service to the new plant, and that the proposed delivery point does not constitute a bypass of Union Electric. The estimated cost is $630,000 which is 100% reimbursible to Panhandle. The proposed construction, according to Panhandle, will not detriment or disadvantage any of its customers.

*Comment date:* May 5, 1995, in accordance with Standard Paragraph G at the end of this notice.

**3. Columbia Gas Transmission Corp.**

[Docket No. CP95–263–000]

Take notice that on March 14, 1995, Columbia Gas Transmission Corporation (Columbia), filed in Docket No. CP95–263–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for AlliedSignal Inc. (AlliedSignal), formerly Allied Corporation, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that the service is provided pursuant to Rate Schedule X–116, with transportation of up to 15,000 Dth per day of natural gas, which was authorized by Order issued August 19, 1983 in Docket No. CP83–324 as amended.

Columbia states further that the transportation authority is no longer required, the transportation agreement has terminated and alternative service is being provided AlliedSignal under Part 284 Firm Transportation Service under the FTS Rate Schedule filed in Docket No. ST91–1495.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph F at the end of this notice.

**4. MidAmerican Energy Company and Iowa-Illinois Gas and Electric Co.**

[Docket No. CP95–264–000]

Take notice that on March 16, 1995, MidAmerican Energy Company (MidAmerican), P.O. Box 657, Des Moines, Iowa 50303, and Iowa-Illinois Gas and Electric Company, P.O. Box 4350, Davenport, Iowa 52808 (Iowa-Illinois)—together referred to as Applicants—filed in Docket No. CP95–264–000 an application pursuant to Sections 1(c), 7(b), 7(c), and 7(f) of the Natural Gas Act requesting permission and approval for Iowa-Illinois to abandon certain facilities, a declaration that MidAmerican is exempt from the NGA for certain parts of its service area, a service area determination for MidAmerican, and a declaration that MidAmerican qualifies pursuant to the Natural Gas Policy Act as a local distribution company in those areas where it receives a service area determination, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants state that MidAmerican, Iowa-Illinois, Midwest Power Systems Inc. (Midwest Power) and Midwest Resources Inc. (Midwest Resources) have entered into an Agreement and Plan of Merger whereby MidAmerican will be the surviving corporation and public utility. Applicants state that Iowa-Illinois and Midwest Power have filed an application with the Commission for authorization and approval of the merger pursuant to Section 203 of the Federal Power Act (FPA) in Docket No. EC95–004–000. In addition, it is stated that MidAmerican has filed open access electric transmission tariffs in Docket No. ER95–188–000 as well as an application pursuant to Section 204 of the FPA requesting authority to issue securities and assume liabilities.

Applicants indicate that upon consummation of the merger, Iowa-Illinois will cease to provide any public utility services, and all of the public utility services previously provided by Iowa-Illinois will be provided by MidAmerican, including services which require utilization of the facilities which Iowa-Illinois seeks to abandon. MidAmerican's operation of these facilities will occur pursuant to the service area determination which MidAmerican requests pursuant to Section 7(f) of the NGA. The service areas proposed by MidAmerican for determination are identical to the service areas determined for Iowa-Illinois and Midwest Power's predecessor in Docket Nos. CP86–688–000, CP89–655–000, and CP89–2002–000.

MidAmerican also seeks exemption from the NGA pursuant to Section 1(c) for four parts of its service area. Iowa-Illinois was granted an exemption pursuant to Section 1(c) of the NGA for these four parts of its service area in Docket No. CP86–605–000. Applicants also request that the Commission declare that MidAmerican is a local distribution company. Applicants state that Iowa-Illinois and Midwest Power's predecessors were declared by the Commission to be local distribution companies in Docket Nos. CP86–688–000, CP89–2002–000, and CP89–2002–001.

Applicants request that the Commission issue an order authorizing its requests prior to or concurrently with its order authorizing and approving the proposed merger in Docket No. EC95–004–000 and that such authorizations be made effective at the time of the merger.

*Comment date:* April 11, 1995, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs:**

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–7661 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–P

**[Docket No. MT95–9–000]**

## Columbia Gulf Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 20, 1995, Columbia Gulf Transmission Company (Columbia Gulf), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 1995:

First Revised Sheet No. 374
First Revised Sheet No. 375
First Revised Sheet No. 376
First Revised Sheet No. 384
First Revised Sheet No. 385
First Revised Sheet No. 386

Columbia Gulf is tendering for filing revised portions of its ''Request for Service—New Agreement'' and ''Request for Service—Increase in Quantity of an Existing Agreement'' forms contained in its FERC Gas Tariff. Columbia Gulf states that the filing is being made in accordance with Order No. 566, which eliminated the requirement in 18 CFR 250.16(b)(1)(ii) that a pipeline include the information required for a Form No. 592 Affiliate Transportation Log in the request for service forms in the pipeline's tariff. Under previous regulations, a pipeline was required to report certain information on Form No. 592 that a pipeline could only obtain through its request for service forms. In Order No. 566, ''the Commission is no longer requiring pipelines to report these categories of information, and therefore, a tariff provision requiring shippers to disclose such information is no longer needed.''

Columbia Gulf states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 385.214). All such motions or protests should be filed on or before March 30, 1995. 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. 95–7663 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. MT95–8–000]**

## Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 20, 1995, Columbia Gas Transmission Corporation (Columbia), tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective May 1, 1995:

First Revised Sheet No. 552
First Revised Sheet No. 553
First Revised Sheet No. 554
First Revised Sheet No. 571
First Revised Sheet No. 572
First Revised Sheet No. 573

Columbia is tendering for filing revised portions of its ''Request for Service—New Agreement'' and ''Request for Service—Increase in Quantity of an Existing Agreement'' forms contained in its FERC Gas Tariff. Columbia states that the filing is being made in accordance with Order No. 566, which eliminated the requirement in 18 CFR 250.16(b)(1)(ii) that a pipeline include the information required for a Form No. 592 Affiliate Transportation Log in the request for service forms in the pipeline's tariff. Under previous regulations, a pipeline was required to report certain information on Form No. 592 that a pipeline could only obtain through its request for service forms. in Order No. 566, ''the Commission is no longer requiring pipelines to report these categories of information, and therefore, a tariff provision requiring shippers to disclose such information is no longer needed.'' Columbia also states that, for administrative convenience in processing requests for service making use of Columbia's SIT Rate Schedule, it is adding new item ten to the ''Request for Service—New Agreement'' form (First Revised Sheet No. 553). Columbia states that this is consistent with Section 1 of Columbia's SIT Rate Schedule.

Columbia states that copies of its filing have been mailed to all firm customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a 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 385.214). All such motions or protests should be filed on or before March 30, 1995. 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. 95–7662 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. GT95–29–000]**

## East Tennessee Natural Gas Co.; Notice of Filing of Refund Report

March 23, 1995.

On March 20, 1995, East Tennessee Natural Gas Company (East Tennessee), filed its report of refunds to flow through amounts received from its former upstream supplier, Tennessee Gas Pipeline Company (Tennessee).

East Tennessee states that it received from Tennessee on February 16, 1995, a refund of amounts paid during September and October 1993, under its former Tennessee Rate Schedules FT–A, LMS–MA, and FS. Tennessee effectuated the refund pursuant to the Commission's order dated November 15, 1994, in Docket Nos. RS92–23 and RP91–203 *et al.* accpeting Tennessee's July 15, 1994 compliance filing implementing settlement rates.

On February 16, 1995, East Tennessee states that it disbursed the refunds, totaling $543,583, to its former jurisdictional sales customers.

East Tennessee states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regualtory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before March 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 95–7664 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–211–000]**

## Natural Gas Pipeline Company of America; Proposed Changes in FERC Gas Tariff

March 23, 1995.

Take notice that on March 21, 1995, Natural Gas Pipeline Company of America (Natural), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, revised tariff sheets to be effective April 21, 1995.

Natural states that the purpose of the filing is to (1) align the rates and amortization period for its remaining firm shippers with those applicable to shippers under various settlements approved by the Commission, and (2) extend the applicability of the pricing differential method at least through the end of the proposed four-year base amortization period.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective April 21, 1995.

Natural states that copies of the filing are being mailed to the parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

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 §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 30, 1995. 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 to the proceeding must file a motion to intervene. 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. 95–7665 Filed 3–28–95; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. RP95–209–000]**

## Southern Natural Gas Co.; Notice of Tariff Filing

March 23, 1995.

On March 15, 1995, Southern Natural Gas Company (Southern), tendered for filing in the above-captioned proceedings a Stipulation and Agreement. Take notice that simultaneously with the filing of the Stipulation, and filed under the same transmittal letter, Southern filed revised tariff sheets which Southern requested to become effective March 1 and April 1, 1995. The tariff sheets proposed to be effective March 1, 1995, seek to place the settlement rates into effect on an interim basis as provided in the Stipulation. The tariff sheets proposed to be effective April 1, 1995, seek to implement the Account 858 and Southern Energy surcharges, also as provided in the Stipulation.

As required by the Commission's Rules of Practice and Procedure, a copy of the filing has been served by regular mail on all parties to this proceeding, and by overnight mail to all parties which have participated actively in the settlement conference, and is being served on all of Southern's shippers 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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 30, 1995. 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 in the public reference room.

**Lois D. Cashell,**

*Secretary.*

### Attachment A

### I. Proposed Tariff Sheets To Be Effective March 1, 1995

Southern Natural Gas Company, FERC Gas Tariff

*Seventh Revised Volume No. 1:*

Original Sheet Nos. 14a, 15a, 16a, 17a, 18a, 19a, 20a, 21a, 53b

First Revised Sheet Nos. 38, 40, 50, 51, 52, 71, 79, 85

Second Revised Sheet Nos. 37, 49, 60, 61, 62, 72, 80, 86, 195

Third Revised Sheet No. 42
Fourth Revised Sheet Nos. 41, 53

*First Revised Volume No. 2A:*

Twentieth Revised Sheet No. 94

**II. Proposed Tariff Sheets To Be Effective April 1, 1995**

Southern Natural Gas Company, FERC Gas Tariff

*Seventh Revised Volume No. 1:*

First Revised Sheet No. 15a
First Revised Sheet No. 17a
Original Sheet Nos. 34B–D
Original Sheet No. 41a
Original Sheet No. 53a

[FR Doc. 95–7666 Filed 3–28–95; 8:45 am]
BILLING CODE 6717–01–M

## Office of Energy Efficiency and Renewable Energy

## Energy Efficiency and Water Conservation at Federal Facilities

**AGENCY:** Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice.

**SUMMARY:** Today's notice announces the members of the Federal Interagency Energy Policy Committee (656 Committee) as designated by each agency. Section 310 of Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities, requires each agency head to designate a senior official, at the Assistant Secretary level or above, to be responsible for achieving the requirements of the Order and appoint such official to the 656 Committee. This notice is being published in the interest of open communication within the Federal Government.

**FOR FURTHER INFORMATION CONTACT:** Mark Ginsberg, EE–90, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–5772.

**SUPPLEMENTARY INFORMATION:** Section 201 of Executive Order No. 12902, 59 FR 11463 (1994), state that the Federal Interagency Energy Policy Committee (''656 Committee'') serves as a forum to coordinate issues involved in implementing energy efficiency, water conservation, and solar and other renewable energy in the Federal sector.

The ''656'' Committee originated from the legislative requirements of Section 656 of the Department of Energy Organization Act, 42 U.S.C. 7266. This Section required the Secretaries of Defense, Commerce, Energy, Housing and Urban Development, Transportation, Agriculture, and the Interior; the Postmaster General of the United States Postal Service; and the Administrator of the General Services Administration each to designate one Assistant Secretary or Assistant Administrator as the principal energy conservation officer of the respective Department or Administration.

The National Aeronautics and Space Administration, the Veterans Administration (currently the Department of Veterans Affairs), and the Environmental Protection Agency were asked by the Department of Energy to designate an individual of similar status to participate as a member. These 12 agencies consume approximately 98 percent of all Federal energy. The Departments of Education, Health and Human Services, Labor, State, and Treasury were invited to join in October, 1993.

The ''656'' Committee is chaired by the Assistant Secretary for Energy Efficiency and Renewable Energy, Department of Energy. It meets periodically to provide policy guidance and to review agency progress on Federal energy conservation plans and associated investments. The purpose of the Committee is to strengthen energy conservation programs which emphasize productivity through the efficient use of energy, and concurrently encourage interagency cooperation in energy conservation. It permits top management of the Federal Government to focus attention on the tasks and missions related to National objectives rather than on the tasks of a particular agency.

The following is a list of the members of the ''656 Committee'':

### Federal Interagency Energy Policy Committee

*Chair*

Ms. Christine Ervin, Assistant Secretary, Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–1, Forrestal Building, Room 6C–016, 1000 Independence Avenue, SW, Washington, DC 20585, Phone: (202) 586–9220, Fax: (202) 586–9260

*Agriculture*

Mr. Wardell C. Townsend, Jr., Assistant Secretary for Administration, U.S. Department of Agriculture, Administration Building, Room 248W, 14th and Independence Avenue, SW, Washington, DC 20250, Phone: 202–720–3590, Fax: 202–720–2191

*Commerce*

Mr. Thomas R. Bloom, Chief Financial Officer and Assistant Secretary for Administration, U.S. Department of Commerce, Main Commerce, Room 5830, 14th and Constitution Avenue, NW, Washington, DC 20230, Phone: 202–482–4951, Fax: 202–482–3592

*Defense*

Mr. Joshua Gotbaum, Assistant Secretary of Defense for Economic Security, U.S. Department of Defense, The Pentagon, Room 3E808, Washington, DC 20301–3300, Phone: 703–695–6639, Fax: 703–693–7011

*Education*

Mr. Rodney A. McCowan, Assistant Secretary Human Resources and Administration, U.S. Department of Education, Room 3181, 400 Maryland Avenue, SW, Washington, DC 20207, Phone: 202–401–0470, Fax: 202–401–0485

*Environmental Protection Agency*

Mr. Jonathan Z. Cannon, Assistant Administrator and Chief Financial Officer, Office of Administration and Resources Management, Environmental Protection Agency, 1111 West Tower, Mail Code 3101, 401 M Street, SW, Washington, DC 20460, Phone: 202–260–4600, Fax: 202–260–0835

*General Service Administration*

Mr. Kenneth R. Kimbrough, Commissioner of Public Buildings Service, General Services Administration, Room 6344, 18th and F Streets, NW, Washington, DC 20405, Phone: 202–501–1100, Fax: 202–219–2310

*Health and Human Services*

Mr. Kenneth S. Apfel, Assistant Secretary for Management and Budget, U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 508–G, 200 Independence Avenue, SW, Washington, DC 20201, Phone: 202–690–6396, Fax: 202–690–5405

*Housing and Urban Development*

Ms. Marilynn A. Davis, Assistant Secretary for Administration, U.S. Department of Housing and Urban Development, Room 10110, 451 7th Street, SW, Washington, DC 20410, Phone: 202–708–0940, Fax: 202–619–8129

*Interior*

Ms. Bonnie Cohen, Assistant Secretary for Policy, Management and Budget, U.S. Department of the Interior, Mail Stop 6214, Room 6117, 1849 C Street, NW, Washington, DC 20240, Phone: 202–208–6182, Fax: 202–208–5048

*Justice*

Mr. Stephen R. Colgate, Assistant Attorney General for Administration, U.S. Department of Justice, Room 1111, 10th and Constitution Avenue, NW, Washington, DC 20530, Phone: 202–514–3101, Fax: 202–514–1778

*Labor*

Ms. Cecilia J. Bankins, Acting Assistant Secretary for Administration and Management, U.S. Department of Labor, Room S–2514, 200 Constitution Avenue, NW, Washington, DC 20210, Phone: 202–219–9086, Fax: 202–219–8822

*NASA*

Ms. Benita A. Cooper,
Associate Administrator for Management
Systems and Facilities,
National Aeronautics and Space Administration,
Code J, Room 3Y04,
300 E Street, SW,
Washington, DC 20024–3210,
Phone: 202–358–2800,
Fax: 202–358–3068

*U.S. Postal Service*

Mr. William Dowling,
Vice President Engineering,
U.S. Postal Service,
8403 Lee Highway,
4th Floor,
Merrifield, VA 22082–8101,
Phone: 703–280–7001,
Fax: 703–280–5669

*State*

Mr. Patrick S. Kennedy,
Assistant Secretary for Administration,
U.S. Department of State,
Room 6330,
22nd & C Streets, NW,
Washington, DC 20520,
Phone: 202–647–1492,
Fax: 202–647–1558

*Transportation*

Mr. Jon H. Seymour,
Assistant Secretary for Administration,
U.S. Department of Transportation,
Room 10314,
400 7th Street, SW,
Washington, DC 20590,
Phone: 202–366–2332,
Fax: 202–366–9634

*Treasury*

Mr. George Munoz,
Assistant Secretary for Management/ Chief Financial Officer,
U.S. Department of the Treasury,
Room 2423, Main Treasury Building,
15th & Pennsylvania Avenue, NW,
Washington, DC 20220,
Phone: 202–622–1280,
Fax: 202–622–2795

*Veterans Affairs*

Mr. C. Wayne Hawkins,
Deputy Under Secretary for Health for Administration and Operations (10B),
U.S. Department of Veterans Affairs,
810 Vermont Avenue, NW,
Washington, DC 20420,
Phone: 202–535–7606,
Fax: 202–535–7630

**Non-Member Participant**

*OMB*

Dr. Kathleen Peroff,
Deputy Associate Director,
Energy and Science Division,
Office of Management and Budget,
New Executive Office Building,
Room 8001,
725 17th Street, NW,
Washington, DC 20503,
Phone: 202–395–3404,
Fax: 202–395–4817

Issued in Washington, DC on March 23, 1995.

**Christine A. Ervin,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 95–7733 Filed 3–28–95; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–5180–9]**

## Acid Rain Program: Notice of State and Local Acid Rain Programs

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Title IV of the Clean Air Act requires EPA to establish the Acid Rain Program to reduce the adverse environmental and public health effects of acidic deposition. Under titles IV and V of the Act, State and local permitting authorities develop and administer acid rain programs as part of their title V operating permits programs. The State and local permitting authorities listed in this notice have submitted acid rain programs for EPA review that have subsequently been determined to be acceptable to the EPA Administrator as part of their title V operating permits programs. This notice is for informational purposes only and does not replace any other **Federal Register** title V operating permits program approval notices.

**FOR FURTHER INFORMATION CONTACT:** Robert Miller, U.S. EPA, Acid Rain Division (6204J), 401 M St., SW, Washington, DC 20460, (202) 233–9077.

**SUPPLEMENTARY INFORMATION:** In Phase I of the Acid Rain Program (1995 through 1999), EPA issues Phase I acid rain permits and is the permitting authority for certain acid rain affected sources, most of which are coal burning, electric generating plants. In Phase II of the Acid Rain Program (beginning in the year 2000 and continuing thereafter), State and local permitting authorities are required under titles IV and V of the Act to act as the permitting authority for all acid rain affected sources and issue acid rain permits as part of their title V operating permits programs. Affected sources must submit their initial Phase II acid rain permit applications to the appropriate permitting authority no later than January 1, 1996. Initial acid rain permits must be issued to all affected sources no later than December 31, 1997.

If, by November 15, 1995, the State or local jurisdiction (e.g., district, county, or city) in which an affected source is located has both (1) an acid rain program identified in this or a comparable **Federal Register** notice as acceptable to the Administrator and (2) a title V operating permits program granted full or interim approval by the Administrator in a **Federal Register** notice, then the designated representative of the affected source should submit the initial Phase II acid rain permit application and 3 copies to that state or local authority. Otherwise, the designated representative should submit the initial Phase II acid rain permit application and one copy to the EPA Regional office for the region, and two copies to the State or local jurisdiction, in which the source is located.

The following State or local permitting authorities have submitted acid rain programs that are acceptable to the Administrator as part of their title V operating permits programs:

### Region 4

The Department of Natural Resources, in the state of Georgia;

The Department for Environmental Protection, in the Commonwealth of Kentucky;

The Chattanooga-Hamilton County Air Pollution Control Bureau, in the state of Tennessee;

The Knox County Department of Air Pollution Control, in the state of Tennessee;

The Metropolitan Government of Nashville and Davidson County, in the state of Tennessee.

### Region 6

The Department of Pollution Control and Quality, in the state of Arkansas;

The Department of Environmental Quality, in the state of Louisiana;
The Department of Environmental Quality, in the state of Oklahoma.

**Region 7**

The Department of Natural Resources, in the state of Iowa;
The Department of Health and Environment, in the state of Kansas;
The Department of Natural Resources, in the state of Missouri;
The Department of Environmental Quality, in the state of Nebraska.

**Region 8**

The Department of Environmental Quality, in the state of Utah.

**Region 9**

The Department of Environmental Quality, in the state of Arizona;
The Pinal County Department of Health and Human Services, in the state of Arizona;
The Bay Area Air Quality Management District, in the state of California;
The Monterey Bay Unified Air Pollution Control District, in the state of California;
The Division of Environmental Protection, in the state of Nevada.

**Region 10**

The Department of Environmental Quality, in the state of Oregon;
The Benton County Clean Air Authority, in the state of Washington;
The Northwest Air Pollution Authority, in the state of Washington;
The Olympic Air Pollution Control Authority, in the state of Washington;
The Puget Sound Air Pollution Control Agency, in the state of Washington;
The Southwest Air Pollution Control Authority, in the state of Washington;
The Spokane County Air Pollution Control Authority, in the state of Washington;
The Washington Department of Ecology, in the state of Washington;
The Yakima County Clean Air Authority, in the state of Washington.

Dated: March 22, 1995.

**Brian J. McLean,**

*Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 95–7719 Filed 3–28–95; 8:45 am]
**BILLING CODE 6560–50–P**

**[PF–621; FRL–4939–4]**

## Pesticide Tolerance Petitions; Filings and a Withdrawal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces initial filings of petitions (PP) and a food additive petition (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities. It also announces the withdrawal of a petition.

**ADDRESSES:** By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice 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 address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

| Product manager | Office location/telephone number | Address |
|---|---|---|
| George LaRocca (PM 15) | Rm. 204, CM #2, 703-557-2400. | 1921 Jefferson Davis Hwy., Arlington, VA. |
| Joanne Miller (PM 23) | Rm. 237, CM #2, 703-305-7830. | Do. |
| Phil Hutton (PM 90) | 5th Floor, CS #1, 703-308-8260. | 2800 Crystal Drive, Arlington, VA. |

**SUPPLEMENTARY INFORMATION:** EPA has received pesticide petitions and food/ feed additive petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

### Initial Filings

1. *PP 4E4422.* American Semiochemicals Association, 1620 I St., NW., Washington, DC 20006, has submitted the petition proposing to amend 40 CFR part 180 by establishing a regulation to exempt from the requirement of a tolerance residues of all lepidopteran pheromones, independent of mode of application or physical form or shape. (PM 90)

2. *PP 5F4462.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has submitted the petition pursuant to section 408(d)(1) of the Federal Food, Drug and Cosmetic Act to propose that 40 CFR 180.436 be amended to establish a tolerance for the insecticide cyfluthrin (cyano (4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropane-carboxylate) in or on the raw agricultural commodity pears at 0.20 part per million. (PM 13)

3. *FAP 4H5704.* Ecoscience Corp., 377 Plantation St., Worcester, MA 01605, has submitted the food/feed additive petition proposing to establish exemptions from the requirement of a tolerance for residues of the microbial pest control agent *Metarhizium anisopliae* strain of ESC 1 in or on all processed food and animal feed when applied as an insecticide to structures. (PM 90)

### Withdrawal of Filing

4. *PP 8F3656.* Miles, Inc., Agricultural Division, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, has requested the withdrawal of the petition without prejudice to future filing. Notice of the petition was originally published in the **Federal Register** of

October 12, 1988 (53 FR 39594) and proposed to amend 40 CFR part 180 by establishing a regulation to permit the residues of the herbicide 4-amino-6-(1,1-dimethylethyl)-3-(ethylthio)-1,2,4-triazin-5-(4H)-one and its triazinone metabolites in or on wheat grain at 0.03 part per million (ppm), wheat straw at 0.5 ppm, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.1 ppm, meat, fat, and meat byproducts of poultry at 0.05 ppm, milk at 0.03 ppm, and eggs at 0.01 ppm. (PM 23)

### List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests.

**Authority:** 7 U.S.C. 136a.

Dated: February 23, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7580; Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–F**

**[OPP–34073; FRL 4941–9]**

## Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

**DATES:** Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on June 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

### II. Intent To Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 19 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names/active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before June 27, 1995 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| EPA Reg No. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 000228–00093 | Bin Spray | Malathion | Peanut storage areas, bagged flour, packaged cereals, EC formulation on stored wheat, oats, corn rye, barley |
| 000228–00274 | ULV Malathion 95 | Malathion | Sugar beets (as a ULV formulation), feed lots, holding pens |
| 000264–00465 | MOCAP 10G | Ethoprop | All turf uses except golf courses |
| 000352–00479 | DuPont Technical Vendex Miticide | Fenbutatin Oxide | Ornamental use |
| 000352–00480 | Dupont Vendex 50WP Miticide | Fenbutatin Oxide | Ornamental use |
| 000352–00493 | DuPont Vendex 4L Miticide | Fenbutatin Oxide | Ornamental use |
| 000869–00027 | Green Light 50% Malathion | Malathion | Cole crops, squash, plums, fleas & ticks in pet quarters, yards, use on dogs |
| 001015–00066 | Douglas Malathion 57-WE | Malathion | Melons, pumpkins, asparagus, carrots, vegetables grown in commercial green houses, almonds, apples, dormant or delayed sprays, filberts, grape vines (overwintering on nursery stock only), pears, pineapple, plums, prunes quince, field crops, pasture, range grasses, peanuts, safflower, soybeans, sugar beets, tobacco, stored products, fly & mosquito control. livestock pest control, forest trees, around the home, in and around greenhouses & gardens, in and around wineries & processing plants, plants processing dry milk, food & nonfood areas of food handling establishments |
| 001386–00114 | Insect Spray | Malathion | Crack & crevice treatment in food holding areas, poultry direct application, poultry premises treatment, poultry roost paint, dogs & cats spray, dogs & cats animal quarters, melons |
| 001386–00124 | Malathion-5 Emulsifiable Concentrate | Malathion | Melons, peanuts, green sorghum, cranberries, asparagus, carrots, beef cattle, sheep, goats, swine, poultry, peanut protection, grain protection of stored grain |
| 001386–00605 | Malathion-6 Grain | Malathion | Stored grain sorghum, field & garden seeds, rice |

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

| EPA Reg No. | Product Name | Active Ingredient | Delete From Label |
|---|---|---|---|
| 001622–00054 | Roach & Insect Spray | Malathion | All indoor uses |
| 010370–00047 | Fords Lawn Granules | Chlorpyrifos | Sugar beets |
| 019713–00046 | Drexel Simazine 80W | Simazine | Asparagus, artichokes, sugarcane, non-cropland |
| 019713–00060 | Drexel Simazine 4L | Simazine | Asparagus, artichokes, sugarcane, non-cropland |
| 019713–00252 | Drexel Simazine 90DF | Simazine | Asparagus, artichokes, sugarcane, non-cropland |
| 019713–00271 | Simazine 80W Herbicide | Simazine | Asparagus, artichokes, sugarcane, non-cropland |
| 019713–00273 | IDA, Inc. Simazine 4L | Simazine | Asparagus, artichokes, sugarcane, non-cropland |
| 056644–00069 | Security Brand Malathion Multi-Purpose Spray | Malathion | Almonds, apples, asparagus, filberts, peanuts, pears, pineapples, plums, prunes, melons, pumpkins, quince, dog & cat pests, animal quarters |

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

| Company No. | Company Name and Address |
|---|---|
| 000228 | Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425. |
| 000264 | Rhone-Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. |
| 000352 | DuPont Agricultural Products, Registration & Regulatory Affairs, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880. |
| 000869 | Green Light Co., P.O. Box 17985, San Antonio, TX 78217. |
| 001015 | Douglas Chemical Co., 1500 E. Old 210 Hwy., Liberty, MO 64068. |
| 001386 | Universal Cooperatives, Inc., 7801 Metro Parkway, P.O. Box 460, Minneapolis, MN 55440. |
| 001622 | Klix Chemical Co., 551 Railroad Ave., South San Francisco, CA 94080. |
| 010370 | Roussel Uclaf Corp., 95 Chestnut Ridge Road, P.O. Box 30, Montvale, NJ 07645. |
| 019713 | Drexel Chemical Company, P.O. Box 9306, 2487 Pennsylvania St., Memphis, TN 38190. |
| 056644 | Security Products Co. of Delaware, Inc., P.O. Box 59084, Minneapolis, MN 55459. |

### III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

### List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: March 15, 1995.

**Daniel M. Barolo,**

*Director, Office of Pesticide Programs.*

[FR Doc. 95–7583 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

**[OPP–180961; FRL 4942–2]**

## 2,4-D; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Minnesota Department of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide 2,4-D (EPA Reg. No. 264–2) to control waterplantain on up to 20,000 acres of wildrice in Minnesota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision on whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 13, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation ''OPP–180961,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA,

from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the herbicide, 2,4-D, available as Weedar 64 (EPA Reg. No. 264–2) from Rhone-Poulenc Ag Company, to control waterplantain which develops a dense leaf canopy in wild rice fields and is known to reduce wild rice yields by more than 90 percent. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, waterplantain is found in nearly all Minnesota fields which have been cropped continuously to wild rice. In the spring waterplantain appears two to three weeks before wild rice emerges and severly obstructs wild rice development. No herbicides are currently registered for use on wild rice because of a ruling by EPA that disallowed chemicals that are registered for use on ''rice'' to be used on wild rice because of differences in taxonomy and growing practices of the two crops. Non-chemical control by hand-weeding or mechanical cultivation is not practical since wild rice fields are flooded with water.

Under the proposed exemption a maximum of one application could be applied, at a rate of 8.0 fl. oz. of product (0.25 lb active ingredient (a.i.) per acre). A maximum of 1,375 gal. of product or 5,500 lbs. (a.i.) could be applied in 1994. Applications would be made between May 1 and July 31, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for this use of 2,4-D on wild rice in Minnesota have been requested and granted for the past 5 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Minnesota Department of Agriculture.

### List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7585 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPP–180963; FRL 4942–4]**

## Fomesafen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the New York State Department of Environmental Conservation (hereafter referred to as the ''Applicant'') for use of the pesticide fomesafen (Reflex 2LC) (EPA Reg. No. 10182–83) manufactured by Zeneca Ag Products, to control broadleaf weeds on up to 24,383 acres of snap beans. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 13, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation ''OPP–180963,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Reflex 2LC. The Applicant provided information in accordance with 40 CFR part 166 to the Agency which supports the position that an emergency situation would exist for New York snap bean growers if Reflex 2LC is not available for use this growing season.

According to the Applicant, infestations of broadleaf weeds have caused significant yield reductions in dry and snap bean fields in New York State. Cultural practices and the use of registered alternative herbicides have proven ineffective in controlling a variety of broadleaf weed species. Bean crop yields have significantly declined and the incidence of weed contamination in the final product has increased steadily since the loss of the herbicide Premerge (dinoseb) in 1987.

Under the proposed exemption a maximum of one application could be applied, at a rate of 1.0 to 1.25 pints of Reflex 2LC per acre (0.25 to 0.313 lb active ingredient (a.i.) per acre). A maximum of 3,816 gallons of product or 7,632 pounds of (a.i.) could be applied

in 1995. Applications would be made between June 1, and August 15, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of fomesafen on snap and dry beans have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the New York State Department of Environmental Conservation.

**List of Subjects**

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7584 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPP–180966; FRL 4943–7]**

## Lactofen; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Oregon Department of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide Lactofen (Cobra Herbicide) (EPA Reg. No. 59639–34) manufactured by Valent U.S.A. Corp., to control black nightshade, hairy nightshade, and redroot pigweed on up to 2,000 acres of snap beans. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 13, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation ''OPP–180966,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8328; e-mail: fried.larry@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of Lactofen (Cobra Herbicide). The Applicant provided information (in accordance with 40 CFR part 166) to the Agency which supports the position that an emergency situation would exist for Oregon snap bean growers if Cobra Herbicide is not available for use this growing season.

According to the Applicant, infestations of black night shade, hairy nightshade, and redroot pigweed have caused significant yield reductions in snap bean fields in Oregon. The registered herbicides do not control these identified weed species.

Snap bean crop yields have significantly declined and the incidence of weed contamination in the final product has increased steadily since the loss of Chloramben Herbicide (Amiben).

Under the proposed exemption a maximum of one application could be applied, at a rate of 3/4 pint (.1875 lb. active ingredient (a.i.)) of product per acre. A maximum of 281.25 gallons of product or 375 lbs. of (a.i.) could be applied in 1995. Application would occur between April 1, 1995 and July 31, 1995.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of Cobra Herbicide on snap beans have been requested and granted for the past 3 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oregon Department of Agriculture.

**List of Subjects**

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7582 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–F**

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**[OPP–180965; FRL 4942–6]**

## Oxytetracycline; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received specific exemption requests from the Michigan, Oregon and Washington Departments of Agriculture (hereafter referred to as the ''Applicant'') for use of the pesticide,

oxytetracycline, to control fire blight on apples for 5,000 acres in Michigan, 4,340 acres in Oregon, and 3,000 acres in Washington State. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 13, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation ''OPP–180965,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemptions for use of the bactericide, oxytetracycline, available as Terramycin (EPA Reg. No. 618–104) from Merck and Company, to control fireblight on up to 5,000 acres of apples in Michigan, 4,340 in Oregon and 3,000 in Washington State. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicants, the bactericide commonly used to control fire blight has been streptomycin, however, apples have developed a resistance to streptomycin and have become susceptible to blight. None of the registered pesticides are effective against this disease and, without an effective control growers will incur significant economic losses during the 1995 growing season.

Under the proposed exemptions, a maximum of five ground applications of Terramycin for Michigan, and a maximum of up to eight application for Oregon and Washington, would be made at 0.8 ounces to 1.0 pound of product (50 to 100 gallons of a 200 ppm solution per acre). A 60–day preharvest interval will be observed.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a)(6)]. Exemptions for the use of oxytetracycline on apples have been requested and granted for the past 4 years, and an application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Michigan, Oregon and Washington Departments of Agriculture.

### List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 22, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7717 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

**[OPP–180967; FRL 4944–3]**

## Pyrithiobac-Sodium; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Arkansas State Plant Board (hereafter referred to as the ''Applicant'') for use of the pesticide pyrithiobac-sodium, to control morningglory and cocklebur on up to 500,000 acres of cotton in Arkansas. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments must be received on or before April 13, 1995.

**ADDRESSES:** Three copies of written comments, bearing the identification notation ''OPP–180967,'' should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as ''Confidential Business Information.'' 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 Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308–8347; e-mail: collantes.margarita@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for use of the herbicide, pyrithiobac-sodium, available as Staple from DuPont Agricultural Products, to control morningglory and cocklebur on up to 500,000 acres of cotton in Arkansas. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the registered alternative herbicides Command and Cotoran, provide only fair control unless environmental conditions are perfect. If no rainfall occurs for activation of the soil applied herbicide, no height difference is established for the post-directed spray. This is often compounded by wet weather preventing the directed application to be made. Command was used last year by over one-half of the Arkansas cotton growers for morningglory control. Command provides good control of pitted morningglory, but poor control of the entire leaf and ivyleaf species. In addition, off-target movement problems have created a controversy in Arkansas and the long-term future of this herbicide remains clouded. Even with Command, an emergency situation exists for an over-the-top herbicide for morningglory control. In addition, a second weed that is rapidly increasing is the cocklebur which is resistant to MSMA and DSMA. The arsenical herbicides have been Arkansas primary means of cocklebur control and resistance is fast rendering them useless. The applicant estimates a yield loss ranging from 17 to 66 percent due to cocklebur and a 72 percent yield loss due to pitted morningglory.

Under the proposed exemption, a maximum of two ground or air applications of Staple would be made at 1.0 fluid ounces of product (or 1.18 to 2.35 ozs 85 percent SP/A) per acre. Not to exceed 2.0 fluid ounces of product per acre. No applications would be made within 45 days of harvest.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24 (a)(1)].

Pyrithiobac-sodium is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arkansas State Plant Board.

### List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 17, 1995.

**Lois Rossi,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7581 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

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**[OPP–50805; FRL–4934–5]**

## Issuance of Experimental Use Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

**FOR FURTHER INFORMATION CONTACT:** By mail: Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

**SUPPLEMENTARY INFORMATION:** EPA has issued the following experimental use permits:

*241–EUP–128.* Issuance. American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. This experimental use permit allows the use of 300 pounds of the insecticide/miticide 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile on 150 acres of greenhouse and shadehouse ornamentals to evaluate the control of various insect pests. The program is authorized only in the States of Alabama, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, North Carolina, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from January 18, 1995 to January 18, 1997. (Dennis Edwards, Jr., PM 19, CM #2, Rm. 207, (703–305–6386))

*524–EUP–85.* Issuance. Monsanto Company, 700 14th St., NW., Suite 1100, Washington, DC 20005. This experimental use permit allows the use of 556.875 pounds of the herbicide glyphosate on 500 acres of soybeans to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin. The experimental use permit is effective from January 19, 1995 to January 19, 1996. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, CM #2, Rm. 241, (703–305–6800))

*54555–EUP–6.* Issuance. SKW Trostberg, AG., c/o Siemer and Associates, Inc., 4672 W. Jennifer, Suite 103, Fresno, CA 93722. This experimental use permit allows the use of 28,531 pounds of the growth regulator hydrogen cyanamide on 2,437.9 acres of top fruits to evaluate control of diseases and maturation of fruit. The program is authorized only in the States of Alabama, Arizona, California, Florida, Georgia, and Texas. The experimental use permit is effective from January 12, 1995 to January 12, 1996. (Joanne I. Miller, PM 23, CM #2, Rm. 237, (703–305–7830))

*707–EUP–122.* Issuance. Rohm and Haas Company, Independence Mall West, Philadelphia, PA 19105. This experimental use permit allows the use of 321 pounds of the active ingredient α-butyl-α-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile on 535 acres of cucurbits to evaluate the control of various fungi. The program is authorized only in the States of Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Iowa, Indiana, Maryland, Massachusetts, Michigan, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, and Wisconsin. The experimental use permit is effective from July 1, 1994 to June 30, 1995. A temporary tolerance for residues of the active ingredient in or on curcurbits has

been established. (Steve Robbins, PM 21, CM #2, Rm. 259, (703–305–6900))

Persons wishing to review these experimental use permits are referred to the designated product manager. Inquires concerning these permits should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

**Authority**: 7 U.S.C. 136.

Dated: March 7, 1995.

**Stephen L. Johnson,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 95–7716 Filed 3–28–95; 8:45 am]

BILLING CODE 6560–50–F

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**[FRL–5179–8]**

## Notice of Proposed Administrative Settlement; Lorentz Barrel and Drum Superfund Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; Request for public comment.

**SUMMARY:** In accordance with Section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA,'' commonly referred to as Superfund), 42 U.S.C. 9622(i) and Section 7003(d) of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. § 6973, notice is hereby given of a proposed cost recovery administrative settlement concerning the Lorentz Barrel and Drum Superfund Site in San Jose, California (the ''Site''). The United States Environmental Protection Agency (''EPA'') is proposing to enter into a *de minimis* settlement pursuant to Section 122(g)(4) of CERCLA. This proposed settlement is intended to resolve the liabilities under CERCLA and RCRA of 88 *de minimis* parties for all past and future response costs associated with the Lorentz Barrel and Drum Site. The names of the settling parties are listed below in the Supplementary Information section. These 88 parties collectively have agreed to pay $1,853,545.51 to EPA and $1,273,062.71 to the California Department of Toxic Substances Control (''California DTSC'').

EPA is entering into this agreement under the authority of Section 122(g)(4) of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. A *de minimis* party is one that contributed a minimal amount of hazardous substances to a site in comparison to other hazardous substances at a site, and contributed hazardous substances that are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at a site. Under the authority granted by Section 122(g), EPA proposes to settle with 88 potentially responsible parties at the Lorentz Barrel and Drum Superfund Site, each of whom is responsible for no more than one percent of the barrels or drums that may have contained hazardous substances sent to the Site, as reflected on the waste-in list developed by EPA.

*De minimis* settling parties will be required to pay their allocated share of all part response costs and the estimated future response costs at the Lorentz Barrel and Drum Site, including all federal and state response costs, and a premium to cover the risks of remedy failure and cost overruns. Fifteen of the settling *de minimis* parties were parties to earlier settlements with EPA in which they conducted cleanup work at the Site. EPA has calculated the value of the prior settlors' work and has arrived at an equitable amount which the 15 prior settlors have agreed to pay in this settlement to resolve their liabilities to EPA and the California DTSC for the Site.

EPA may withdraw or withhold its consent to this settlement if comments received during the 30 day public comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate.

**DATES:** Pursuant to Section 122(i)(1) of CERCLA and Section 7003(d) of RCRA, EPA will receive written comments relating to this proposed settlement for thirty (30) days following the date of publication of this Notice. If EPA receives a request for a public hearing within thirty (30) days following the date of publication of this Notice, pursuant to Section 7003(d) of RCRA, EPA will hold a public hearing to afford the public an opportunity to comment on the proposed settlement.

**ADDRESSES:** Comments and requests for a public hearing should be addressed to the Docket Clerk, U.S. EPA Region IX (RC–1), 75 Hawthorne Street, San Francisco, CA 94105 and should refer to: Lorentz Barrel and Drum Superfund Site, San Jose, California, U.S. EPA Docket No. 95–01. A copy of the proposed Administrative Order on Consent may be obtained from the Regional Hearing Clerk at the address provided above. EPA's response to any comments received will be available for inspection from the Regional Hearing Clerk; at the Dr. Martin Luther King, Jr. Public Library, Reference Desk, 180 W. San Carlos Street, San Jose, CA 95113; and at San Jose State University, Clark Library, Government Publications Desk, One Washington Square, San Jose, CA 95192.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Andrews, Senior Associate, (202) 260–3109, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement (2244), Room 3105, 401 M Street SW., Washington, DC 20460, or Randa Bishlawi, Assistant Regional Counsel, (415) 744–1345, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

**SUPPLEMENTARY INFORMATION:** The proposed *de minimis* settlement resolves EPA and California DTSC's claims under Section 107 of CERCLA and Section 7003 of RCRA against the following Respondents: A.J. Raisch Paving Company, Albuquerque Enterprises, Allgood Industries, Amchem Products Inc., American National Can Company, Ampex Corporation, Ashland Chemical Company, Auto Body Supply Warehouse, Bayday Chemical, Boise Cascade Company, Central Valley Beverage, Conoco Inc., Consolidated Freightways, Container Corporation of America, Continental Can Company Inc., Cul Mar, Daw Printing Ink Company, Day-Brite Lighting Inc., Defense Logistics Agency, Dymo Industries Inc., Eastman Kodak Company, El Camino Hospital, Exchange Linen Services, Fiberglass Representatives Inc., Firestone Tire & Rubber Company, Fletco Paint Company, General Electric Company, Georgia Pacific Corporation, Getty Oil, Gilroy Foods Inc., Great Western Chemical Company, Green Giant Company, Guardian Sanitary Supply Company, H & H Robertson Company, Holly Sugar Refinery, Hewlett Packard Company, I.B.M., Inland Container, International Rotex, IT Transportation, Jasco Chemical Company, Jones Hamilton Company, Kern Food Inc., KTI Chemical Inc., L.& N. Uniform Supply Company, Lockheed, Minwax Company Inc., Morton Paint Company, Nasa Ames Research Center, National Fiberglass Corporation, National Semiconductor Corporation, National Starch & Chemical Company, State of Nevada Department of Highways, Norton Company, Olin Corporation, Pacific Gas

& Electric Company, Packaging Industries Inc., Patterson Pacific Parchment Company, Patterson Frozen Foods, Pepsi Cola Bottling Company, Potlatch Corporation, Quaker State Oil Company, Raychem Corporation, San Jose Graphics, San Jose Hospital, San Jose State University, Sanmina Corporation, Santa Clara County, Santa Clara Valley Water Conservation District, Sea & Ski Corporation, Sierra Chemical Company, Solvent Service Company, Stanford Linear Accelerator, Stockton Door Company, Tenneco Inc., Tidewater Oil Company, Tom Matsui, U.S. Air Force, U.S. Steel Corporation, United Air Lines, United Can Company, Universe Paint Company, University of California, Valley Farm Supply, Van Waters & Rogers Inc., Van Products Company, Inc., Vi-Tex Packaging Company and Westinghouse Electric Corporation.

Dated: March 14, 1995.

**Keith Takata,**

*Acting Director, Hazardous Waste Management Division.*

[FR Doc. 95–7592 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–M**

**[FRL—5179–2]**

## Sparks Solvent Fuel Site; Notice of Proposed De minimis Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given of a proposed *de minimis* administrative cost recovery settlement entered into by EPA, Region IX and Air BP, and operating division of BP Exploration & Oil Inc. (AIR BP). The proposed settlement was entered into under the authority granted EPA in section 122(h) of CERCLA, and provides that Air BP will reimburse EPA its proportional share of the costs incurred at, in connection with, or anticipated to be incurred by EPA in providing oversight to a time critical removal being conducted at the Sparks Solvent Fuel site in Sparks, Nevada.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, (RC–1), 75 Hawthorne Street, San Francisco, CA 94105, Attention: Steve Armsey, Regional Hearing Clerk.

**ADDRESSES:** A copy of the proposed settlement may be obtained from Steve Armsey, U.S. EPA Region IX Hearing Clerk (RC–1), 75 Hawthorne St., San Francisco, CA. 94105. Comments should reference the Sparks Solvent Fuel site and EPA Docket No. 95–09.

**FOR FURTHER INFORMATION CONTACT:** Mark Klaiman, Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne St., San Francisco, CA, 94105, Telephone: (414) 744–1374.

Dated: March 9, 1995.

**Laura Yoshii,**

*Acting Director, Hazardous Waste Management Division.*

[FR Doc. 95–7720 Filed 3–28–95; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL COMMUNICATIONS COMMISSION

**[Gen. Docket No. 89–97; DA 95–414]**

## Private Wireless Division, Southern California Public Safety Plan Amendment

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Acting Chief, Private Wireless Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Southern California (Region 5). As a result of accepting the amendment for the Plan for Region 5, the interests of the eligible entities within the region will be furthered.

**EFFECTIVE DATE:** March 13, 1995.

**FOR FURTHER INFORMATION CONTACT:** Deborah A.R. Behlin, Wireless Telecommunications Bureau, Private Wireless Division (202) 418–0680.

**SUPPLEMENTARY INFORMATION:**

### Order

In the Matter of: Southern California Public Safety Plan.

Adopted: February 28, 1995.
Released: March 13, 1995.

By the Acting Chief, Private Radio Division, Wireless Telecommunications Bureau and the Acting Chief, Spectrum Engineering Division, Office of Engineering and Technology:

1. By letter dated August 1, 1994, Region 5 (Southern California) proposed to amend the Region 5 Public Safety Plan that was accepted under delegated authority, by the Commission on November 8, 1989, 4 FCC Rcd 8352 (1989). The proposed amendment would revise the current channel allotments.

2. On October 5, 1994, the Commission placed the letter on Public Notice with comments due on November 4, 1994, 59 FR 50761 (1994). On November 3, 1994, Region 27 (Nevada) filed a request to extend the comment period. The comment period was extended until November 25, 1994; however, no further comments were filed.

3. We have reviewed the proposed amendment to the Region 5 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered, That the Public Safety Radio Plan for Region 5 is amended, as set forth in the Region's letter of August 1, 1994. This amendment is effective immediately.

5. For further information, contact Deborah Behlin at (202) 418–0680.

Federal Communications Commission.

**Robert H. McNamara,**

*Acting Chief, Private Radio Division.*

[FR Doc. 95–7701 Filed 3–28–95; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 213–010955–004.

*Title:* ACL/H–L Reciprocal Sparce Charter and Sailing Agreement.

*Parties:*

Atlantic Container Line AB
Hapag-Lloyd AG

*Synopsis:* The proposed amendment increases the number of vessels to be employed under the Agreement to 23 (previously 20), and makes other non-significant modifications to the Agreement.

*Agreement No.:* 202–011241–014.
*Title:* USA-North Europe Rate Agreement.
*Parties:*

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

*Synopsis:* The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

*Agreement No.:* 202–011242–014.
*Title:* North Europe-USA Rate Agreement.
*Parties:*

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line

*Synopsis:* The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

*Agreement No.* 206–011243–004.
*Title:* Trans-Atlantic Carrier Association Agreement.
*Parties:*

North Europe-USA Rate Agreement
USA-North Europe Rate Agreement

*Synopsis:* The proposed amendment modifies Article 9-Duration and Termination, to further stipulate that, if the Trans-Atlantic Conference Agreement (TACA) is not terminated on or before June 7, 1995, then the subject Agreement shall be automatically terminated on that date. This provision complies with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and dockets 94–29 and 94–30.

*Agreement No.:* 202–011375–017.
*Title:* Trans-Atlantic Conference.
*Parties:*

Atlantic Container Line AB
P&O Containers Limited
Sea-Land Service, Inc.
Hapag-Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line
Cho Yang Shipping Co. Ltd.
Mediterranean Shipping Company, S.A.
DSR-Senator Lines
Polish Ocean Lines
Orient Overseas Container Line (UK) Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Tecomar S.A. de C.V.
Hanjin Shipping Co., Ltd.

*Synopsis:* The proposed amendment modifies Articles 13 and 14 of the Agreement to facilitate independent action procedures and to provide for a more flexible service contract shipper/carrier negotiation/participation process. The provisions comply with the Commission's *Order Conditionally Approving Settlement* (date March 2, 1995) in Fact Finding Investigation No. 21 and Dockets 94–29 and 94–30.

*Agreement No.:* 203–011494.
*Title:* TMM/Contship Space Charter and Sailing Agreement.
*Parties:*

Transportacion Maritima Mexicana, S.A. de C.V.
Contship Containerlines Limited

*Synopsis:* The proposed Agreement authorizes the parties to charter space to each other and to rationalize sailings in the trades between U.S. Atlantic and Gulf ports and U.S. points, and (1) ports and points in Spain, Italy, and France and European points and (2) ports and points in Mexico. The Agreement also permits the parties to discuss and agree upon rates, charges, rules, terms of service contracts, and other transportation terms and conditions on a voluntary basis.

*Agreement No.:* 224–200925.
*Title:* Port of New York & New Jersey/American President Lines, Inc., Container Incentive Agreement.
*Parties:*

Port Authority of New York & New Jersey (''Port'')
American President Lines, Inc. (''APL'')

*Synopsis:* The Agreement provides for the Port to pay APL an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

*Agreement No.:* 224–200926.
*Title:* Port of New York & New Jersey/Ivaran Agencies, Inc., Container Incentive Agreement.
*Parties:*

Port Authority of New York & New Jersey (''Port'')
Ivaran Agencies, Inc. (''Ivaran'')

*Synopsis:* The Agreement provides for the Port to pay Ivaran an incentive of $15.00 for each import container and $25.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1995, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: March 24, 1995.

By Order of the Federal Maritime Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 95–7698 Filed 3–28–95; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### Herbert Marvin Barnard, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 12, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Herbert Marvin Barnard*, Huntsville, Alabama; to acquire 10.52

percent; Eula Tabor Brooks, Huntsville, Alabama, to acquire 8.61 percent; Otha Wilson Cole, Huntsville, Alabama, to acquire 6.70 percent, Mildred Louise Olszewski, Huntsville, Alabama, to acquire 7.65 percent; John Oscar Vickers, Jr., Huntsville, Alabama, to acquire 7.65 percent; and Kenneth Dean Willis, Huntsville, Alabama, to acquire 7.65 percent, of the voting shares of Childersburg, Bancorporation, Inc., Childersburg, Alabama, and thereby indirectly acquire First Bank of Childersburg, Vincent, Alabama.

Board of Governors of the Federal Reserve System, March 23, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–7688 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

## Central and Southern Holding Company; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Central and Southern Holding Company*, Milledgeville, Georgia; to acquire 5.7 percent of Nova Financial Corporation, Atlanta, Georgia, and thereby engage in data processing activities, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Georgia.

Board of Governors of the Federal Reserve System, March 23, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–7689 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

## Milton Bancshares, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than April 21, 1995.

**A. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. Milton Bancshares, Inc.*, Milton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Milton, Milton, Wisconsin.

Board of Governors of the Federal Reserve System, March 23, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–7690 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

## Union Bancshares of Campbell County, Inc., et al.; Notice of Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

*1. Union Bancshares of Campbell County, Inc.*, Jellico, Tennessee; to retain 6.1 percent of its subsidiary Gem City Development Corporation, Jellico, Tennessee, and thereby engage in community, development activities, pursuant to § 225.25(b)(6) of the Board's Regulation Y. The proposed activity will be conducted throughout the state of Tennessee.

**B. Federal Reserve Bank of Chicago** (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

*1. First Midwest Bancorp, Inc.*, to engage *de novo* in the purchasing of loan participations and the making of direct loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

**C. Federal Reserve Bank of Kansas City** (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

*1. First Ainsworth Company*, Ainsworth, Nebraska; to engage *de novo* through its subsidiary First National Agency of Ainsworth, Inc., Ainsworth, Nebraska, in securities brokerage activities, pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–7691 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

## U.S. Trust Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can ''reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.'' Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 12, 1995.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

*1. U.S. Trust Corporation*, New York, New York; to acquire all of the voting shares of New USTC Holding Company, New York, New York, and New U.S. Trust Company, New York, New York. United States Trust Company of New York, New York, New York, also has applied to become a bank holding company by acquiring New U.S. Trust Company of New York (in organization). New USTC Holding Company has applied to become a bank holding company by acquiring New U.S. Trust Company of New York, New York, New York; U.S.T.L.P.O. Corp., Dallas, Texas, and thereby indirectly acquire U.S. Trust Company of Texas, N.A., Dallas, Texas; and U.S. Trust Company of California, Los Angeles, California.

In connection with these applications, New USTC Holdings Corporation has applied to acquire certain of U.S. Trust Corporation's nonbanking subsidiaries and thereby engage in through the U.S. Trust Company of Florida Savings Bank, Palm Beach, Florida, in the following activities: (1) trust company, investment and financial advisory, community development, and savings association operations activities, pursuant to §§ 225.25(b)(3), (4), (6), and (9), of the Board's Regulation Y; (2) through CTMC Holding Company and its wholly-owned subsidiaries, U.S. Trust Company of the Pacific Northwest, and CTC Consulting, all of Portland, Oregon, in trust company, and investment and financial advisory activities, pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y; (3) through Campbell, Cowperthwait & Co., Inc., New York, New York, in investment or financial advice, pursuant to § 225.25(b)(4) of the Board's Regulation Y; (4) through U.S. Trust Company of New Jersey and its wholly-owned subsidiary, U.S.T. Securities Corp., both of Princeton, New Jersey, in trust company, investment and financial advisory, securities brokerage, and riskless principal activities, pursuant to §§ 225.25(b)(3), (4), and (15) of the Board's Regulation Y and by Board order (*U.S. Trust Corporation* 78 *Federal Reserve Bulletin* 336 (1992)); and (5) through U.S. Trust Company of Connecticut, Stamford, Connecticut, in trust company and investment and financial advisory activities, pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 1995.

**Jennifer J. Johnson,**

*Deputy Secretary of the Board.*

[FR Doc. 95–7692 Filed 3–28–95; 8:45 am]

BILLING CODE 6210–01–F

## FEDERAL TRADE COMMISSION

**[File No. 951–0054]**

## Glaxo plc; Proposed Consent Agreement With Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a British drug company to divest, within nine months, Wellcome's worldwide research and development assets for certain non-injectable drugs used to treat migraine headaches, or else agree to have a Commission-appointed trustee complete the transaction. In addition, the consent agreement would require Glaxo, for a period to ten years, to obtain Commission approval before acquiring more than a one percent interest in any entity involved in the clinical development, manufacture or sale of non-injectable migraine drugs.

**DATES:** Comments must be received on or before May 30, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary,

Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Claudia Higgins or Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order**

In the Matter of: Glaxo plc, a corporation.

The Federal Trade Commission (''Commission''), having initiated an investigation of the Acquisition of certain stock of Wellcome plc (''Wellcome'') by Glaxo plc (''Glaxo''), and it now appearing that Glaxo, hereinafter sometimes referred to as ''Proposed Respondent,'' is willing to enter into an Agreement Containing Consent Order to (i) divest certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondent, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed Respondent Glaxo is a corporation organized, existing, and doing business under and by virtue of the laws of England, with its principal place of business located at Landsdowne House, Berkeley Square, London W1X 6BQ, England.

2. Proposed Respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed Respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondent's counsel, Charles E. Koob, Esquire, of Simpson, Thacher & Bartlett at 425 Lexington Avenue, New York, New York 10017–3954, shall constitute service. Proposed Respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

7. Proposed Respondent has read the proposed Complaint and Order contemplated hereby. Proposed Respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing it has fully complied with the Order. Proposed Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

**Order**

*I*

It is ordered that, as used in this Order, the following definitions shall apply:

A. ''Respondent'' or ''Glaxo'' means Glaxo plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Glaxo plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

B. ''Wellcome'' means Wellcome plc, its directors, officers, employees, agents and representatives, successors and assigns; its subsidiaries, divisions, groups and affiliates controlled by Wellcome plc; and the respective directors, officers, employees, agents and representatives, and the respective successors and assigns of each.

C. ''Commission'' means the Federal Trade Commission.

D. ''Acquisition'' means the acquisition by Glaxo of the capital stock of Wellcome pursuant to an offer announced on January 23, 1995.

E. ''Sumatriptan'' means the compound with the formula 3-[2-(Dimethylamino)ethyl]-N-methylindole-5-methanosulfonamide and/or or the butanedioate (I:I) salt thereof [i.e. the ''succinate''] in respect of its therapeutic indication for the treatment of the disease migraine.

F. ''311C90'' means the compound with the formula (S)-4-[[3-2-(dimethylamino)ethyl]-]H-indol-5-yl]methyl]-2-oxazolidinone and/or a pharmaceutically acceptable salt thereof in respect of its therapeutic indication for the treatment of the disease migraine.

G. ''Wellcome's 311C90 Assets'' means Wellcome's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of 311C90 that are not part of Wellcome's physical facilities. ''Wellcome's 311C90 Assets'' include, but are not limited to, all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution

information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Wellcome's 311C90, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain United States Food and Drug Administration (''FDA'') approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States or other countries for Wellcome's 311C90.

H. ''Glaxo's Sumatriptan Assets'' means Glaxo's worldwide assets relating to the worldwide research and development, manufacture, distribution and sale of Glaxo's Sumatriptan that are not part of Glaxo's physical facilities. ''Glaxo's Sumatriptan Assets'' include, but are not limited, to all formulations, patents, trade secrets, technology, know-how, specifications, designs, drawings, processes, production information, manufacturing information, testing and quality control data, research materials, technical information, distribution information, customer lists, information stored on management information systems (and specifications sufficient for the Acquirer to use such information), software used in connection with Glaxo's Sumatriptan, inventory sufficient for the Acquirer to complete all clinical trials or bioequivalency studies necessary to obtain FDA approvals and all data, contractual rights, materials and information relating to obtaining FDA approvals and other government or regulatory approvals for the United States or other countries for Glaxo's Sumatriptan.

I. ''Alternative Assets to be Divested'' means Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets at the discretion of the trustee to be appointed pursuant to Paragraph IV. of this Order.

J. ''Acquirer'' means the entity to whom Glaxo shall divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets pursuant to this Order.

K. ''Non-injectable $5HT_{1D}$ agonists'' means any $5HT_{1D}$ agonist medicine formulation intended for the treatment of the disease migraine to be administered to patients by any method other than subcutaneous, intramuscular or intravenous injection.

*II*

It is further ordered that:

A. Respondent shall divest, absolutely and in good faith, within nine (9) months of the date this Order becomes final Wellcome's 311C90 Assets.

B. Respondent shall divest Wellcome's 311C90 Assets only to an Acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture of Wellcome's 311C90 Assets is to ensure continued research and development of Wellcome's 311C90, in the same manner in which Wellcome's 311C90 would be researched and developed absent the proposed Acquisition, and to remedy the lessening of competition resulting from the proposed Acquisition as alleged in the Commission's Complaint.

C. The time period for divestiture pursuant to this Paragraph II. of this Order shall be tolled if and when Respondent:

1. Provides to the Commission objective evidence, including, but not limited to, results of clinical trials, indicating that, based on 311C90's medical profile, and through no fault of Respondent, Wellcome's 311C90 Assets are not viable or marketable; and

2. Petitions the Commission to modify this Order, pursuant to section 5(b) of the FTC Act and Section 2.51 of the Commission's Rules of Practice, based on the circumstances described in Subparagraph II.C.1 of this Order.

This tolling of the time period for divestiture shall end when the Commission rules on Respondent's petition to modify this Order.

*III*

It is further ordered that:

A. Within forty-five (45) days of the date this Order becomes final, the Commission shall appoint a trustee to ensure that Glaxo expeditiously performs its responsibilities required by this Order. Glaxo shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondent which consent shall not be unreasonably withheld. If Respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee with ten (10) days after notice by the staff of the Commission to Respondent of the identity of any proposed trustee, Respondent shall be deemed to have consented to the selection of the proposed trustee.

2. Within ten (10) days after the appointment of the trustee, Glaxo shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to assure Glaxo's compliance with the terms of this Order. As part of the trustee agreement, the trustee shall execute confidentiality agreement(s) with Glaxo.

3. The trustee shall serve until either (a) the Acquirer has filed with the FDA for approval to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); (b) the trustee determines that the Acquirer has abandoned its efforts to obtain FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); or (c) the trustee determines that the Acquirer has failed to exercise reasonable diligence in research and development toward obtaining FDA approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order), which lack of diligence will have been certified to and accepted by the Commission, whichever comes first. The trustee's service shall continue for no more than two (2) years following divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested.

4. The trustee shall have full and complete access to the personnel, books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets or to any other relevant information as the trustee may reasonably request, including but not limited to all records kept in the normal course of business that relate to the research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of his or her responsibilities pursuant to this Order.

5. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the

trustee's duties and responsibilities. The trustee shall account for all expenses incurred. The Commission shall approve the account of the trustee, including fees for his or her services.

6. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

7. If the trustee ceases to act or fails to act diligently a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

8. The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the requirements of this Order.

9. The trustee shall report in writing to Respondent and the Commission every one hundred and eighty (180) days concerning the trustee's obligation pursuant to this Paragraph III.

B. Respondent shall comply with all reasonable directives of the trustee regarding Respondent's obligations to comply with this Order.

C. The trustee may require Glaxo to manufacture Wellcome's 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) for use by the Acquirer in conducting clinical trials or bioequivalency studies if:

1. The Acquirer has depleted its inventory of 311C90 (or Sumatriptan, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) acquired pursuant to the divestiture;

2. The Acquirer has a need to conduct further clinical development trials or bioequivalency studies prior to submission of an application to the FDA to manufacture and sell a product based on Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatripan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order); and

3. Despite good faith support to establish its own manufacturing capability for 311C90 (or Sumatripan, if Galaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order), the Acquirer has not succeeded in doing so as of the time 311C90 (or Sumatripan, if Galaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) is needed for such clinical trials or bioequivalency studies. The trustee shall determine reasonable compensation for Glaxo, based upon the costs of manufacture, for such production.

*IV*

It is further ordered that:

A. If Glaxo has not divested, absolutely and in good faith and with the Commission's prior approval, Wellcome's 311C90 Assets within the time required by Paragraphs II.A. and II.C. of this Order, the Commission may direct the trustee appointed pursuant to Paragraph III. of this Order to divest the Alternative Assets to be Divested. Neither the decision of the Commission to direct the trustee nor the decision of the Commission not to direct the trustee to divest the Alternative Assets to be Divested shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(*l*) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondent to comply with this Order.

B. If the trustee is directed under Subparagraph A. of this Paragraph to divest the Alternative Assets to be Divested, Respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall extend the authority and responsibilities of the trustee appointed under Paragraph III. of this Order to include divesting the Alternative Assets to be Divested.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Alternative Assets to be Divested.

3. Within ten (10) days after the extension of the trustee's authority and responsibilities, Respondent shall amend the existing trust agreement in a manner that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the extension of the trustee's authorities and responsibilities as described in Paragraph IV.B.3. to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend this period only two (2) times.

5. The trustee shall have full and complete access to the personnel books, records, facilities and technical information related to Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, or to any other relevant information, as the trustee may reasonable request, including but not limited to all records kept in the normal course of business that relate to research and development of, and the cost of manufacturing, Wellcome's 311C90 and Glaxo's Sumatriptan. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondent shall extend the time for divestiture under this Paragraph in an amount equal to the delay as determined by the Commission or, for a court-appointed trustee, by the court.

6. The trustee shall serve, without bond or other security, at the cost and expense of Respondent, on such reasonable and customary terms and conditions as the Commission may set. The trustee shall have authority to employ, at the cost and expense of Respondent, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the Respondent. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Alternative Assets to be Divested.

7. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other

expenses incurred in connection with the preparations for, or defense of, any claim whether or not resulting in any liability, except of the extent that such liabilities, losses, damages, claims or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

8. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. of this Order.

9. The Commission or, in the case of a court-appointed trustee, the court may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

10. The trustee shall report in writing to Respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

11. If a divestiture application filed pursuant to this Paragraph IV. is pending before the Commission, and Respondent petitions the Commission to modify this Order based on the conditions in Paragraph II.C., then the Commission shall not approve the divestiture application until it rules on the petition to modify.

*V*

It is further ordered that:

A. Upon reasonable notice and request from the Acquirer to Glaxo, Glaxo shall provide information, technical assistance and advice to the Acquirer with respect to Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order) such that the Acquirer will be capable of continuing the current research and development. Such assistance shall include reasonable consultation with knowledgeable employees of Glaxo and training at the Acquirer's facility for a period of time sufficient to satisfy the Acquirer's management that its personnel are adequately knowledgeable about Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested to the Acquirer pursuant to Paragraph IV.A. of this Order). However, Respondent shall not be required to continue providing such assistance for more than twelve (12) months after divestiture of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Respondent may require reimbursement from the Acquirer for all of its own direct costs incurred in providing the services required by this Subparagraph V.A. Direct costs, as used in this Subparagraph V.A., means all actual costs incurred exclusive of overhead costs.

B. Pending divestiture of Wellcome's 311C90 Assets pursuant to Paragraph II. of this Order or the Alternative Assets to be Divested pursuant to Paragraph IV. of this Order, Respondent shall:

1. Take such actions as are necessary to prevent the destruction, removal, wasting, deterioration or impairment of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets, except for ordinary wear and tear; and

2. Maintain research and development of Wellcome's 311C90 Assets and Glaxo's Sumatriptan Assets at the levels planned by Wellcome for 311C90 and Glaxo for Sumatriptan as of January 1, 1995.

C. Glaxo shall maintain physical assets necessary to manufacture Wellcome's 311C90 and Glaxo Sumatriptan until the Acquirer has filed with the FDA for approval to manufacture and sell a product based upon Wellcome's 311C90 Assets (or Glaxo's Sumatriptan Assets, if Glaxo's Sumatriptan Assets are divested pursuant to Paragraph IV.A. of this Order). The maintenance of physical assets described in this Subparagraph shall not exceed two (2) years following divestitute of Wellcome's 311C90 Assets or the Alternative Assets to be Divested. Provided however, that Glaxo shall be allowed to discontinue maintenance of the physical assets necessary to manufacture Glaxo's Sumatriptan if Glaxo divests Wellcome's 311C90 Assets pursuant to this Order.

*VI*

It is further ordered that, for a period of ten (10) years from the date this Order becomes final, Respondent shall not without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 1% of the stock, share capital, equity, or other interest in any concern, corporate or noncorporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition engaged in, (1) the clinical development of non-injectable $5HT_{1D}$ agonists for approval by the FDA for the treatment of migraines or (2) the manufacture and sale of non-injectable $5HT_{1D}$ agonists for approval by the FDA for the treatment of migraines; or

B. Acquire any assets currently used for or previously used for (and still suitable for use for) (1) the clinical development of non-injectable $5HT_{1D}$ agonists approved by the FDA for the treatment of migraines or (2) the manufacture and sale of noninjectable $5HT_{1D}$ agonists approved by the FDA for the treatment of migraines.

Provided, however, that this Paragraph VI. shall not apply to the acquisition of products or services in the ordinary course of business.

*VII*

It is further ordered that:

A. Within sixty (60) days after the date this Order becomes final and every sixty days (60) days thereafter until Respondent has fully complied with the provisions of Paragraphs II., III., IV., V.A. and V.B. of this Order, Respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II., III., IV. and V. of this Order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II., III., IV. and V. of this Order, including a description of all substantive contacts or negotiations for accomplishing the divestiture and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with this Order.

*VIII*

It is further ordered that, for the purpose of determining or securing compliance with this Order, Respondent shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control or Respondent, relating to any matters contained in this Order; and

B. Upon five (5) days' notice to Respondent, and without restraint or interference from Respondent, to interview officers, directors, or employees of Respondent, who may

have counsel present regarding such matters.

*IX*

It is further ordered that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations arising out of this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission (''Commission'') has accepted provisionally an agreement containing a proposed Consent Order from Glaxo plc (''Glaxo'') under which Glaxo would be required to divest worldwide assets relating to the research and development, manufacture, distribution and sale of a therapeutic compound for the treatment of migraine headaches (''Wellcome's 311C90 Assets'') to a Commission-approved purchaser.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Order.

Pursuant to an offer announced on January 23, 1995, Glaxo, a British company, will acquire all of the capital stock of Wellcome plc (''Wellcome''), a British company.

The proposed complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, in the market for the research and development of non-injectable $5HT_{1D}$ agonists. $5HT_{1D}$ agonists are a specific class of drugs known to act on receptors in the human body that are responsible for migraine attacks.

The proposed consent order would remedy the alleged violation by replacing the lost competition that would result from the acquisition. Under the proposed Consent Order, Glaxo is required to provide technical assistance and advice to assist the purchaser of Wellcome's 311C90 Assets in obtaining FDA approval to manufacture and sell non-injectable $5HT_{1D}$ agonists. The proposed Order also provides for a trustee to assure that Glaxo appropriately divests the Wellcome 311C90 Assets. If Glaxo fails to divest the Wellcome 311C90 Assets within nine months, then the trustee's authority may be extended to include responsibility to divest either Wellcome's 311C90 Assets or Glaxo's Sumatriptan Assets.[1] The potential that the trustee could ultimately divest Sumatriptan, a highly-valued product already on the market to treat migraine, ensures that Glaxo will exert all possible efforts to divest Wellcome's 311C90 Assets.

Under the provisions of the order, Glaxo is also required to provide to the Commission a report of compliance with the divestiture provisions of the order within sixty (60) days following the date this order becomes final, and every sixty (60) days thereafter until Glaxo has completely divested its interest in Wellcome's 311C90 Assets.

The proposed Consent Order will also prohibit Glaxo, for a period of ten (10) years, from acquiring more than a one percent interest in any entity involved in, or any assets used for, the clinical development or manufacture and sale of non-injectable $5HT_{1D}$ agonists either to be approved by or already approved by the Food and Drug Administration (''FDA'') for the treatment of migraines.

One year from the date the Order becomes final and annually thereafter for nine (9) years, Glaxo will be required to provide to the Commission a report of its compliance with the Consent Order. The Consent Order also requires Glaxo to notify the Commission at least thirty (30) days prior to any change in the structure of Glaxo resulting in the emergence of a successor.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–7630 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Glaxo's Sumatriptan, marketed under the brand name Imitrex®, is currently on the market in the U.S. to treat patients with migraine attacks. It is available in the U.S. only in injectable form.

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**[Filed No. 911 0095]**

## La Asociacion Medica de Puerto Rico, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Medical Association, the Physiatry Section, and the two doctors from encouraging, organizing or entering into: any boycott or refusal to deal with any third-party payer; or any agreement to refuse to provide services to patients covered by any third-party payer. In addition, the consent agreement would prohibit, for five years, the respondents from soliciting information from physiatrists regarding their decisions whether to participate in agreements with insurers and provide service; from passing such information along to other doctors; and from giving physiatrists advice about making those decisions.

**DATES:** Comments must be received on or before May 30, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Alan Loughnan or Alice Au, New York Regional Office, Federal Trade Commission, 150 William St., Suite 1300, New York, N.Y. 10038. (212) 264–1207.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease and Desist**

In the Matter of : La Asociació Médica de Puerto Rico, an unincorporated association, La Sección de Fisiatría de La Asociación Médica de Puerto Rico, an unincorporated association, Rafael L. Oms, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico, and Rafael E. Seín, M.D., individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico.

The Federal Trade Commission having initiated an investigation of certain acts and practices of La Asociación Médica de Puerto Rico, (''La Asociación Médica'') an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico, (''La Sección de Fisiatría'') an unincorporated association; Rafael L. Oms, M.D. (''Oms''), individually and as an officer of La Sección de Fisiatría de la Asociación Médica de Puerto Rico; and Rafael E. Seín, M.D. (''Seín''), individually and as an officer of La Médica de Fisiatría de la Asociación Médica de Puerto Rico (hereinafter sometimes referred to as ''proposed respondents''); and it now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated, and providing for other relief:

It is hereby agreed by and between the proposed respondents, by their duly authorized officers and their attorneys, and counsel for the Federal Trade Commission that:

1. Proposed respondents La Asociación Médica and La Sección de Fisiatría are unincorporated associations organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Puerto Rico, with their offices and principal place of business at Ave. Fernández Juncos Num. 1305, Apartado 9387, Santurce, Puerto Rico, 00908.

Proposed respondents Dr. Oms and Dr. Seín are physiatrists, licensed to practice medicine in the Commonwealth of Puerto Rico. Drs. Oms and Seín have at relevant times been officers of La Sección de Fisiatría. Dr. Oms' business address is Palmas Mail Station, Box 879, Suite 170, Humacao, Puerto Rico, 00792, and Dr. Seín's business address is 11746 Fernandez Juncos Station, San Juan, Puerto Rico 00910–1746.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the draft of complaint and order contemplated hereby. Proposed respondents understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

*I*

It is ordered that, as used in this order, the following definitions shall apply:

A. ''La Asociación Médica'' means La Asociación Médica de Puerto Rico, the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates, and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

B. ''La Sección de Fisiatría'' means La Sección de Fisiatría de la Asociación Médica de Puerto Rico, the Physiatry Section of the Medical Association of Puerto Rico, its predecessors, sections, committees, subsidiaries, divisions, groups, and affiliates and their respective directors, officers, employees, agents, consultants, and any other persons working for or on behalf of the foregoing, and their respective successors and assigns;

C. ''Rafael Oms'' means Rafael L. Oms, M.D., his agents, and employees;

D. ''Rafael Seín'' means Rafael E. Seín, M.D., his agents, and employees;

E. ''Third-party payer'' means any person or entity that provides a program or plan pursuant to which such person or entity agrees to pay for treatment by physicians or therapists to individuals described in the plan or program as eligible for such coverage (''Covered Persons''), and includes, but is not limited to, health insurance companies; prepaid hospital, medical, or other health service plans, whether operated by a private or governmental entity; health maintenance organizations; preferred provider organizations; prescription service administrative organizations; health benefits programs for government employees, retirees, and dependents; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs; and

F. ''Participation agreement'' means any existing or proposed agreement, oral or written, in which a third-party payer agrees to reimburse a physician or therapist for the provision of medical, physical therapy, or other health-care services to Covered Persons, and the physician or therapist agrees to accept such payment from the third-party payer for such provision of medical, physical therapy, or other health-care

services during the term of the agreement.

*II*

It is further ordered that respondents, directly or indirectly, or through any corporate or other device, in or in connection with their activities in or affecting commerce, as ''commerce'' is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, forthwith cease and desist from:

A. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to boycott or refuse to deal with any third-party payer, or to withdraw from, threaten to withdraw from, refuse to enter into, or threaten to refuse to enter into any proposed or existing participation agreement;

B. Entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating in or carrying out any agreement, either express or implied, between or among any physiatrists, to refuse to provide services to patients covered by any third-party payer in any proposed or existing participation agreement, or to threaten to refuse to provide services to such patients;

C. For a period of five (5) years after the date this order becomes final, continuing a formal or informal meeting of physiatrists after:

1. Any person makes any statement concerning one or more physiatrists' intentions or decisions with respect to

a. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

b. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement;

and respondents La Asociación Méedica and La Sección de Fisiatría fail to eject such person from the meeting; or

2. Two persons make statements prohibited in order Paragraphs II.C.1.a. or II.C.1.b.;

provided, however, that respondent Oms or Seín shall not be in violation of the order if, immediately following a violation of this paragraph of the order, he leaves a meeting continued in violation of this paragraph, and within thirty (30) days after such meeting, reports to the Commission the circumstances of such meeting, the substance and source of the prohibited statements, and the respondents' actions in response thereto;

D. For a period of five (5) years after the date this order becomes final, providing advice to any physiatrist regarding

1. The desirability or appropriateness of participating in any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement;

provided, however, that nothing contained in this Paragraph II.D. shall prohibit respondents from communicating purely factual information describing the terms and conditions of any participation agreement or operations of any third-party payer;

E. For a period of five (5) years after the date this order becomes final, communicating in any way to any physiatrist any information concerning any physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement; or

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement; or

F. For a period of five (5) years after the date this order becomes final, soliciting from any physiatrist any information concerning that physiatrist's or any other physiatrist's intentions or decisions with respect to

1. Entering into, refusing to enter into, threatening to refuse to enter into, participating in, threatening to withdraw from, or withdrawing from any existing or proposed participation agreement;

2. Refusing or threatening to refuse to provide services to patients covered by any third-party payer in any existing or proposed participation agreement.

Provided, however, that nothing in this order shall be construed to prevent respondents from exercising rights permitted under the First Amendment to the United States Constitution to petition any federal, state, or commonwealth government executive agency or legislative body concerning legislation, rules, programs, or procedures, or to participate in any federal, state or commonwealth administrative or judicial proceeding;

Provided further that this order shall not be construed to prohibit any respondent or any member of respondent associations from entering into an agreement or combination with any other physician or health care practitioner with whom the individual physician practices in partnership or in a professional corporation, or who is employed by the same person.

*III*

It is further ordered that this order shall not be construed to prohibit respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither nor is part of (1) an agreement, proposed agreement, or attempt to enter into an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

*IV*

It is further ordered that:

A. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying compliant to each of its current members, and to the last known address of any other person who was a member of La Sección de Fisiatría in 1990 or 1991;

B. La Asociación Médica, within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of its current members who is not also a member of La Sección de Fisiatría;

C. La Sección de Fisiatría, within thirty (30) days after the date on which this order becomes final, distribution by first-class mail a copy of this order and the accompanying complaint to each third-party payer with whom La Sección de Fisiatría has entered into negotiations concerning the provision of physiatry services;

D. La Asociación Médica, within sixty (60) days after the date on which this order becomes final, publish in Spanish this order and the accompanying complaint in an issue of *Prensa Médica* or in any successor publication, in the same type size normally used for articles that are published in *Prensa Médica* or successor publication;

E. La Sección de Fisiatría and La Asociación Médica, for a period of five (5) years after the date on which this order becomes final, provide each new member of La Sección de Fisiatría and new member of La Asociación Médica with a copy of this order at the time the member is accepted into membership of

La Sección de Fisiatría or La Asociación Médica;

F. La Sección de Fisiatría and La Asociación Médica each file a verified, written report with the Commission within ninety (90) days after the date on which this order becomes final, and annually thereafter for five (5) years on the anniversary of the date on which this order becomes final, and at such other times as the Commission may require, by written notice to La Sección de Fisiatría or La Asociación Médica, setting forth in detail the manner and form in which it has complied and is complying with this order;

G. La Sección de Fisiatría and La Asociación Médica for a period of five (5) years after the date on which this order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any action taken in connection with the activities covered by Parts II and IV of this order;

H. For a period of five (5) years after the date on which this order becomes final, La Sección de Fisiatría and La Asociación Médica notify the Commission at least thirty (30) days prior to any proposed change in La Sección de Fisiatría or La Asociación Médica, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or association, a change of name, a change of address, or any other change that may affect compliance obligations with this order.

It is further ordered that this order shall terminate on March 30, 2015.

**Analysis of Proposed Consent Order to Aid Public Comment**

The Federal Trade Commission has accepted an agreement to a proposed consent order from La Asociación Médica de Puerto Rico (''La Asociació Médica''), an unincorporated association; La Sección de Fisiatría de la Asociación Médica de Puerto Rico (''La Sección de Fisiatría''), an unincorporated association; Rafael L. Oms, M.D.; and Rafael E. Seín, M.D.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that La Asociación Médica, La Sección de Fisiatría, Dr. Oms, Dr. Seín, and others have restrained competition among physiatrists by conspiring to engage in a concerted refusal to deal with La Administración de Compensaciones por Accidentes de Automóviles (''Administration for Compensation of Automobile Accidents'' or ''ACAA'') or to treat ACAA Patients. ACAA is a third-party payer that provides health coverage to automobile accident victims in Puerto Rico. The complaint alleges that this conduct violates section 5 of the Federal Trade Commission Act.

The respondents have signed a consent agreement that prohibits them from engaging in unlawful concerted action. Paragraph A of Section II prohibits the respondents from entering into, threatening or attempting to enter into, organizing or attempting to organize, encouraging, continuing, cooperating, in, or carrying out any agreement with an insurer. Paragraph B is similar to Paragraph A, but prohibits refusals or threats to refuse to provide services to patients covered by any insurer. The complaint alleges that the physiatrists attempted to coerce ACAA through a concerted refusal to treat certain patients insured by ACAA.

Paragraphs C, D, E, and F of Section II are fencing-in paragraphs intended to prevent the respondents from engaging in actions that might in the future facilitate a concerted refusal to deal with an insurer of covered patients. The fencing-in provisions of Section II shall terminate five years after the date of issuance of the order. Paragraph C prohibits the respondents from continuing any meeting of physiatrists at which any person makes a statement about intentions or decisions with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreement, unless such person is ejected from he meeting by La Asociación Médica and La Sección de Fisiatría. Paragraph C also prohibits respondents from continuing any meeting at which two persons make such statements. Although Drs. Oms and Seíbn are not required to eject a person from a meeting, Drs. Oms and Seín are required to leave any meeting at which any person makes a statement about intentions or decision with respect to entry into, withdrawal from, or refusal to provide services to patients in connection with any participation agreements, unless such person is ejected from the meeting by La Asociatión Médica and La Sección de Fisiatrı; or at which two persons makes such statements. After Drs. Oms and Seín leave such a meeting, they re required to report to the Commission the circumstances of the meeting.

Paragraph D of Section II prohibits respondents from providing advice to any physiatrist on the desirability or appropriateness of participating in or refusing to provide services to patients covered by any insurer's program (but permits purely factual communications describing the terms of a participation agreement). Paragraph E prohibits respondents from communication to any physiatrist information concerning any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement. Paragraph F prohibits respondents from soliciting information from any physiatrist concerning that person's or any other physiatrist's intention or decision with respect to entry into, withdrawal from, or refusal to provide services to patients covered by any participation agreement.

Section II contains a provision stating that the order does not impair respondents' First Amendment rights to petition the government. Section I also contains another proviso stating that the order does not prevent respondents or association members from forming physician partnerships or professional corporations.

Section III of the proposed order makes clear that the order does not prevent individual respondents Drs. Oms or Seín from communicating medical conditions or personal assessments of individual patients, where such communication neither constitutes nor is part of (1) an agreement among physiatrists to boycott or refuse to deal with any third-party payer, or (2) any other agreement, combination, or conspiracy the purpose, effect, or likely effect of which is to impede competition unreasonably.

Secion IV of the proposed order contains standard notification and compliance provisions. These notification, reporting, and record keeping requirements apply only to La Asociación Médica and La Sección de Fisiatría.

Finally, Section V of the proposed order contains a twenty year ''sunset'' provision. Under this section, the terms of the order shall terminate twenty years after the date of issuance of the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–7631 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

**[Dkt. 9266]**

## Red Apple Companies, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, three New York-based companies and their officer to divest six supermarkets, within 12 months, to a Commission-approved acquirer or acquirers. If the respondents fail to satisfy the divestiture requirements, the consent order permits the Commission to appoint a trustee to divest supermarkets to satisfy the terms of the order. The consent order also prohibits the respondents, for ten years, from acquiring, without prior Commission approval, any supermarket or any interest in an entity that owns or operates a supermarket in New York County south of 116th Street. In addition, the respondents, for ten years, are prohibited from entering into or enforcing any restrictions that would prevent any person acquiring any supermarket owned or operated by any respondent in New York County south of 116th Street from operating the stores as supermarkets.

**DATES:** Compaint issued May 27, 1994. Order issued February 28, 1995.[1]

**FOR FURTHER INFORMATION CONTACT:**

Ronald Rowe, FTC/S–2105, Washington, DC 20580. (202) 326–2610.

**SUPPLEMENTARY INFORMATION:** On Monday, December 19, 1994, there was published in the **Federal Register**, 59 FR 65364, a proposed consent agreement with analysis In the Matter of Red Apple Companies, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed from of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18).

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–7632 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**[Docket No. C–3559]**

## Sulzer Limited; Prohibited Trade Practices, and Affirmative Corrective Actions

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent order.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, Sulzer, a Swiss firm to divest, within six months, a copy of all the information necessary to purchase ingredients for, to manufacture and to sell aluminum polyester powder—equivalent to Sulzer's Amdry 2010—to a Commission-approved acquirer. If the divestiture is not completed on time, the consent order permits the Commission to appoint a trustee to divest copies of both the Amdry 2010 information and all product information relating to the acquired firms aluminum polyester powder. In addition, the consent order requires the respondent, for ten years, to obtain Commission approval before acquiring any assets in the aluminum polyester powder market.

**DATES:** Compalint and Order issued February 23, 1995.[1]

**FOR FURTHER INFORMATION CONTACT:**

Ann Malester, FTC/S–2224, Washington, DC 20580. (202) 326–2682.

**SUPPLEMENTARY INFORMATION:** On Thursday, October 13, 1994, there was published in the **Federal Register,** 59 FR 51983, a proposed consent agreement with analysis In the Matter of Sulzer Limited, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38, Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45,18).

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–7633 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

**[File No. 912 3232]**

## Taleigh Corporation, et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, two marketing corporations and the owner from misrepresenting that any product is new or unique, the existence or conclusions of any test or study, or that an endorsement for any product represents the typical experience of people who use it. The consent agreement would require the respondents to possess scientific evidence to substantiate any representation regarding the performance, benefits, efficacy or safety of any weight-loss or stop-smoking product, or of any food, dietary supplement, drug, or device. In addition, the consent agreement would require the owner to post a $300,000 performance bond, or to establish an escrow account in the amount of $300,000, as a condition of advertising, promoting, selling or distributing any weight-loss or smoking deterrent or cessation product.

**DATES:** Comments must be received on or before May 30, 1995.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:**

Joel Winston or Richard Cleland, FTC/S–4002, Washington, D.C. 20580. (202) 326–3153 or 326–3088.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final

approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of: Raleigh Corporation, and Choice Diet Products, Inc., corporations; and William J. Santamaria, individually and as an officer and director of said corporations.

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission having initiated an investigation of Taleigh Corporation, a Florida corporation, Choice Diet Products, Inc., a New York corporation, and William J. Santamaria, individually and as an officer of said corporations (''proposed respondents''), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Taleigh Corporation, a Florida corporation, by its duly authorized officer, Choice Diet Products, Inc., a New York corporation, by its duly authorized officer, and William J. Santamaria, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Taleigh Corporation, formerly known as Taleigh, Inc., a Florida corporation, is organized, exists and does business under and by virtue of the laws of the State of Florida. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent Choice Diet Products, Inc., a New York corporation, is organized, exists and does business under and by virtue of the laws of the State of New York. At times relevant hereto, its office and principal place of business was located at 4800 N.W. Boca Raton Boulevard, Boca Raton, FL 33431.

Proposed respondent William J. Santamaria is an officer of said corporations. He formulates, directs and controls the policies, acts and practices of said corporation and his address is 20640 Baybrooke Court, Boca Raton, FL 33498.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as circumstances may require) and decision in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint or that the facts as alleged in the draft of complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is subsequently withdrawn by the Commission pursuant to the provision of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

**Order**

For purposes of this Order:

1. ''Clearly and prominently'' as used herein shall mean as follows:

(a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

2. ''Competent and reliable scientific evidence'' shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

3. ''Purchase price'' shall mean all amounts paid to respondents in cash or by check, or charged to a consumer's credit card account or debited from a consumer's checking account, including, where applicable, sales tax, and any charges not authorized by consumers to be charged to their charge card accounts or debited from their checking accounts, *provided however,* with regard to Part XIV, purchase price shall not include shipping or handling charges if such charges are not included in respondents' guarantee or refund offer.

4. ''Weight-loss product'' shall mean any product or program designed or used to prevent weight gain or to produce weight loss, reduction or

elimination of fat, slimming, or caloric deficit in a user of the product or program.

5. ''Smoking deterrent or cessation product'' shall mean any product or program designed to aid or assist the user to stop or reduce the cigarette urge, break the cigarette habit, or stop or reduce smoking.

*I*

It is ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of FormulaTrim 3000, MegaLoss 1000, MegaLoss 3000, MiracleTrim, or any other weight-loss product containing phenylpropanolamine as the active ingredient, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product causes or assists in causing rapid weight loss;

B. Such product causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake;

C. Such product is new or unique or contains a new or unique ingredient;

D. Such product causes the burning of more body fat than five hours of aerobics, running ten miles nonstop, swimming two and a half miles, exercising six hours nonstop, or any similar exercise activity; or

E. Such product contains an active ingredient that, prior to the sale of such product, was available only through doctors.

*II*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that such weight-loss product has any effect on weight or body size, unless respondents disclose, clearly and prominently, and, in a television or videotape advertisement, simultaneously in both the audio and video portions of the advertisement, that reducing caloric intake and/or increasing exercise is required to lose weight; *provided however,* that this disclosure shall not be required if respondents possess and rely upon competent and reliable scientific evidence demonstrating that such product is effective without reducing caloric intake and/or increasing exercise.

*III*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program causes or assists in causing weight loss, or assists in maintaining weight loss;

B. Such product or program causes or assists in causing weight loss without exercise or reducing caloric intake;

C. Such product or program causes the burning of more body fat than any amount of exercise activity; or

D. Such product or program causes or assists the user to stop or reduce smoking easily;

unless such representation is true, and, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

*IV*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any substantially similar product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program enables users to stop smoking easily; or

B. Such product or program works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

*V*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of Nicotain, or any other smoking deterrent cessation product, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any misrepresentation, including through the name of the product, concerning the nature or mechanism of operation of such product, including, but not limited to, that such product contains nicotine or works through a mechanism substantially similar or equivalent to a prescription smoking deterrent patch.

*VI*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in

connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, that:

A. Such product or program is new or unique or contains a new or unique ingredient;

B. Consumers who order the product or program will receive a personal consultation from a physician, medical professional or weight-loss counselor; or

C. Any endorsement (as ''endorsement'' is defined in 16 C.F.R. § 255.0(b)) of such product or program represents the typical or ordinary experience of members of the public who use the product or program.

*VII*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to disclose, clearly and prominently, a material connection, where one exists, between a person providing an endorsement of any product or program, as ''endorsement'' is defined in 16 C.F.R. § 255.0(b), and any respondent, or any other individual or entity manufacturing, labeling, advertising, promoting, offering for sale, selling, or distributing such product or program. For purposes of this Order, ''material connection'' shall mean any relationship that might materially affect the weight or credibility of the endorsement and would not reasonably be expected by consumers.

*VIII*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

*IX*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product or program does not cause any dangerous side effects, nervous jitters, or insomnia;

B. Such product or program burns, reduces, or diminishes body fat; or

C. Such product or program significantly shrinks fat cells;

unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

*X*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device, as ''food,'' ''drug,'' and ''device'' are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, in any manner, directly or by implication, any representation regarding the performance, benefits, efficacy, or safety of any such product, unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation.

*XI*

Nothing in this Order shall prohibit respondents from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

*XII*

Nothing in this Order shall prohibit respondents from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

*XIII*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from charging a consumer's credit card account or debiting a consumer's checking account in an amount in excess of the amount affirmatively authorized by the consumer.

*XIV*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their

officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that consumers can receive a refund, through such terms as ''money back guarantee'' or similar terms, unless respondents refund the full purchase price at the consumer's request in accordance with the provisions of this Part;

B. Failing to disclose, clearly and prominently, any material limitations or conditions that apply to a guarantee, warranty or refund policy;

C. Failing to comply, where applicable, with the requirements of Section 166 of the Truth in Lending Act, 15 U.S.C. § 1666e and 12 CFR 226.12(e)(1); and

D. Failing to refund the full purchase price in accordance with the terms of a guarantee, warranty or refund policy within a reasonable period of time after a consumer complies with the conditions for receiving a refund. For purposes of this Part, ''a reasonable period of time'' shall be:

(1) That period of time specified in respondents' solicitation if such period is clearly and prominently disclosed to the consumer in the solicitation; or

(2) If no period of time is clearly and prominently disclosed, a period of thirty (30) days following the date that the consumer complies with the conditions for receiving a refund.

For purposes of determining whether a consumer has complied with the conditions for receiving a refund, the date for determining whether the consumer has returned the product or program within the specified time shall be the date the consumer mails or causes the product or program to be shipped to the respondents or respondents' designated agents.

*XV*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; and respondents' agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, advertising, packaging, labeling, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from violating any provision of The Mail or Telephone Order Merchandise Rule, 16 CFR Part 435, as amended, effective March 1, 1994, 58 F.R. 49095.

*XVI*

It is further ordered that respondent William J. Santamaria, and respondent Santamaria's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, joint venture or other device, do forthwith cease and desist from advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product to the general public, unless, prior to advertising, promoting, offering for sale, selling, or distributing to the general public any such product, respondent Santamaria first obtains a performance bond in the principal sum of three hundred thousand dollars ($300,000). Said bond shall be conditioned upon compliance by respondent Santamaria with the provisions of the Federal Trade Commission Act, and with the provisions of this Order. The bond shall be deemed continuous and remain in full force and effect as long as respondent Santamaria continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. The bond shall cite this Order as the subject matter of the bond and provide surety against respondent Santamaria's failure to pay consumer redress or disgorgement as set forth herein. Such performance bond shall be an insurance agreement providing surety issued by a surety company that is admitted to do business in a state in which respondent Santamaria is doing business and that holds a Federal Certificate of Authority as Acceptable Surety on Federal Bond and Reinsuring.

Respondent Santamaria shall provide a copy of such performance bond to the associate director of the Federal Trade Commission's Division of Enforcement, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580, prior to the commencement of any business for which such bond is required.

*Provided, however,* in lieu of a performance bond, respondent Santamaria may establish and fund, pursuant to the terms set forth herein, an escrow account in the principal sum of three hundred thousand dollars ($300,000) in cash, or such other assets of equivalent value, which the Commission, or its representative, in its sole discretion may approve. Respondent Santamaria shall maintain such amount in that account for so long as he continues to advertise, promote, offer for sale, sell, or distribute any weight-loss product or smoking deterrent or cessation product, directly or indirectly, to the general public, and for at least five (5) years after he has ceased any such activity. Respondent Santamaria shall pay all costs associated with the creation, funding, operation, and administration of the escrow account. The Commission, or its representative, shall, in its sole discretion, select the escrow agent. The escrow agreement shall be in substantially the form attached to this Order as Exhibit A.

The performance bond or escrow agreement shall provide that the surety company or escrow agent, within thirty days following receipt of notice that a final judgment or an order of the Commission against respondent Santamaria for consumer redress or disgorgement in an action brought under the provisions of the Federal Trade Commission Act has been entered, or, in the case of an order of the Commission, has become final, finding that he has violated the terms of this Order or the Federal Trade Commission Act, and determining the amount of consumer redress or disgorgement to be paid, shall pay to the Commission so much of the performance bond or funds of the escrow account as does not exceed the amount of consumer redress or disgorgement ordered, and which remains unsatisfied at the time notice is provided to the surety company or escrow agent, *provided that,* if respondent Santamaria has agreed to the entry of a court order or an order of the Commission, a specific finding that Santamaria violated the terms of this Order or the provisions of the Federal Trade Commission Act shall not be necessary. A copy of the notice provided for herein shall be mailed to respondent Santamaria at his last known address.

Respondent Santamaria may not disclose the existence of the performance bond or escrow account to any consumer, or other purchaser or prospective purchaser, to whom a

covered product is advertised, promoted, offered for sale, sold, or distributed, without also disclosing at the same time and in a like manner that the performance bond or escrow account is required by order of the Federal Trade Commission in settlement of charges that respondent Santamaria engaged in false and misleading representations.

*XVII*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall:

A. Within thirty (30) days after service of this Order, provide a copy of this Order to each of respondents' current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order; and

B. For a period of five (5) years from the date of issuance of this Order, provide a copy of this Order to each respondents' future principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this Order who are associated with respondents or any subsidiary, successor, or assign, within three (3) days after the person assumes his or her responsibilities.

*XVIII*

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials that are relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

*XIX*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in their corporate structures, including but not limited to dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or affiliates, the planned filing for a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

*XX*

It is further ordered that respondent, William J. Santamaria, shall, for a period of seven (7) years from the date of issuance of this Order, notify the Commission within thirty (30) days of the discontinuance of his present business or employment and of his affiliation with any new business or employment. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business of employment and his duties and responsibilities.

*XXI*

It is further ordered that respondents, Taleigh Corporation and Choice Diet Products, Inc., corporations, their successors and assigns, and their officers; and William J. Santamaria, individually and as an officer and director of the corporate respondents; shall, within sixty (60) days after service of this Order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writ ing, setting forth in detail the manner and form in which they have complied with this Order.

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns advertising and trade practices related to the sale of several weight-loss pills and a smoking cessation product. The Commission's Complaint alleges that proposed respondents Taleigh Corporation, Choice Diet Products, Inc., and William J. Santamaria made a number of false claims regarding the speed and ease with which consumers can burn fat and lose substantial amounts of weight with proposed respondents' weight-loss pills—MegaLoss, FormulaTrim, and MiracleTrim. The Complaint also alleges that proposed respondents falsely promoted these products as new or unique, as causing weight loss without the need for users to diet or exercise, and as providing the same weight-loss benefits as exercise. With respect to MiracleTrim, the Complaint also alleges that respondents falsely represented that consumers who ordered MiracleTrim would receive a personal weight-loss consultation from a qualified professional.

With respect to MegaLoss, the Complaint also alleges that proposed respondents represented that the product would not cause nervous jitters or insomnia, or have any dangerous side effects, and that, prior to the sale of MegaLoss, the active ingredient in the product was not available without a prescription. The Complaint further alleges that respondents represented that FormulaTrim and MegaLoss would ''burn fat'' and that MegaLoss and MiracleTrim would significantly shrink millions of fat cells.

The Complaint also alleges that proposed respondents falsely and misleadingly represented that they possessed and relied upon a reasonable basis when they made the claims set forth above. The Complaint further alleges that proposed respondents falsely represented that the MegaLoss and FormulaTrim pills are scientifically proven to cause significant weight loss. The Complaint also charges that proposed respondents failed to disclose adequately that certain consumer endorsers appearing in their advertising had a material connection to proposed respondents, in that the consumers had been compensated or offered significant compensation for their endorsement.

The Complaint further alleges that proposed respondents have engaged in several unfair and deceptive trade practices, including: (1) Debiting consumers' bank accounts or billing consumers' credit card accounts without their authorization; (2) offering a money-back guarantee in their ads and then denying refunds or failing to make timely refunds to consumers who have returned the product within the required time period; (3) failing to deliver products at all or failing to deliver products within a reasonable period of time; and (4) violating the Truth in Lending Act by not processing credit charges in a timely fashion.

Regarding Nicotain, a purported smoking cessation product, the Complaint charges proposed respondents with representing falsely

and without a reasonable basis that Nicotain enables smokers to stop smoking quickly and easily, and that it works through the same mechanism as a prescription smoking deterrent patch.

With respect to the advertising for both the weight loss pills and Nicotain, the Complaint alleges that proposed respondents falsely represented that consumer testimonials appearing in the ads reflect the typical or ordinary experience of members of the public who have used the products.

The proposed consent order ontains provisions designed to remedy the violations charged and to prevent the proposed respondent from engaging in similar acts in the future.

Part I of the proposed order prohibits proposed respondents from representing that MegaLoss, FormulaTrim, and MiracleTrim, or any other weight-loss product containing phenylpropanolamine as the active ingredient: (1) Causes or assists in causing rapid weight loss; (2) causes or assists in causing substantial weight loss without the need to exercise or reduce caloric intake; (3) is new or unique or contains a new or unique ingredient; (4) causes the burning of more body fat than certain strenuous exercise; or (5) contains an active ingredient that, prior to the sale of such product, was available only through doctors.

Part II requires the proposed respondents to disclose that diet or exercise are required to lose weight in connection with any representation about the effect of a weight-loss product on weight or body size, unless they have competent and reliable scientific evidence to the contrary. Part III prohibits proposed respondents from making the types of weight-loss, fat burning and smoking cessation claims alleged in the complaint to be false and unsubstantiated, unless the claims are true and substantiated by competent and reliable scientific evidence. Part IV prohibits proposed respondents from representing that Nicotain or any substantially similar product (a) will enable smokers to stop smoking easily, or (b) works through a mechanism substantially similar to a prescription smoking deterrent patch. Part V prohibits any misrepresentation concerning the nature or mechanism of operation of any smoking cessation product.

Part VI prohibits proposed respondents from misrepresenting that: (1) Any product or program is new or unique, or contains a new or unique ingredient; (2) consumers who order any product or program will receive a personal consultation from a physician or medically trained weight-loss counselor; or (3) the results claimed in consumer testimonials constitute the typical or ordinary experience of members of the public who use the advertised product or program.

Part VII of the proposed order requires proposed respondents to disclose, clearly and prominently, a material connection, where one exists, between any endorser and the proposed respondents.

Part VIII prohibits proposed respondents from misrepresenting the contents, validity, results, conclusions, or interpretations of any test or study. Part IX requires that proposed respondents have competent and reliable scientific evidence to substantiate the following categories of claims for any product or program: (1) Any representations regarding dangerous side effects, nervous jitters, insomnia, or any other adverse health effects; (2) any representations that the product or program burns, reduces, or diminishes body fat; and (3) any representations that the product or program will significantly shrink fat cells. Part X requires proposed respondents to possess scientific substantiation before making representations regarding the performance, benefits, efficacy, or safety of any weight-loss product, smoking deterrent or cessation product, food, food or dietary supplement, drug, or device.

Parts XI and XII contain safe harbors for claims that are permitted on the labeling of foods and drugs under the applicable FDA regulations.

Part XIII bans proposed respondents' practice of charging a consumer's credit card account of debiting a consumer's checking account in excess of the amount affirmatively authorized by the consumer. Under Part XIV, proposed respondents are prohibited from misrepresenting the terms of a money-back guarantee and from failing to provide a refund when a consumer has complied with the conditions stated in the advertisement for obtaining a refund. Part XV prohibits proposed respondents from failing to comply with the requirements of the Commission's Mail or Telephone Order Merchandise Rule, as amended, effective March 1, 1994.

Part XVI requires that as a condition of advertising, promoting, offering for sale, selling, or distributing any weight-loss product or smoking deterrent or cessation product, proposed respondent Santamaria either obtain a performance bond or establish an escrow account in the amount of $300,000.

Part XVII requires proposed respondents to maintain, for five (5) years, all materials that support, contradict, qualify, or call into question any representations they make which are covered by the proposed order. Part XVIII requires the proposed corporate respondents to distribute a copy of the order to current and future principals, officers, directors, and managers, as well as to any employees having sales, advertising, or policy responsibility with respect to the subject matter of the order. Under Part XIX of the proposed order, the proposed corporate respondents must notify the Federal Trade Commission at least thirty (30) days prior to certain proposed changes in their structures. Part XX requires that proposed respondent Santamaria, for a period of seven (7) years, notify the Commission of any change in his business or employment. Part XXI obliges proposed respondents to file compliance reports with the Commission.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 95–7634 Filed 3–28–95; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the months of April/May 1995:

*Name:* HRSA AIDS Advisory Committee Clinical Issues Subcommittee.

*Time:* April 26, 1995, 10:00 a.m.–4:00 p.m.

*Place:* Grand Hyatt Washington Hotel, 1000 S Street NW., Washington, D.C. 20001.

The meeting is open to the public.

*Purpose:* To facilitate timely dissemination of information about new developments in clinical research, drug development, and policies on HIV diseases into language relevant for practicing caregivers supported by HRSA's HIV/AIDS programs.

*Agenda:* The meeting will include a discussion of the purpose of the subcommittee and the mechanisms for accomplishing its activities.

* * * * *

*Name:* HRSA AIDS Advisory Committee Evaluation Subcommittee.

*Time:* May 4, 1995, 10:00 a.m.–4:00 p.m.

*Place:* Ramada Bethesda Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

The meeting is open to the public.

*Purpose:* To review HRSA's evaluation activities in HIV and recommend new ones.

*Agenda:* This is the initial meeting of this subcommittee. The subcommittee and consultants will be provided an orientation on evaluation policies and programs.

For further information on the Subcommittee meetings, please contact A. Russell Gerber at (301) 443–4588.

* * * * *

*Name:* HRSA AIDS Advisory Committee.

*Time:* May 16, 1995, 1:00 p.m.–5:00 p.m.; May 17, 1995, 8:30 a.m.–5:00 p.m.; May 18, 1995, 8:30 a.m.–2:00 p.m.

*Place:* Phillips Ballroom, Radisson-Barcelo Hotel, 2121 P Street NW., Washington, D.C. 20037.

The meeting is open to the public.

*Purpose:* The Committee advises the Secretary with respect to health professional education, patient care/health care delivery to HIV-infected individuals, and research relating to transmission, prevention and treatment of HIV infection.

*Agenda:* The topics to be discussed include the Relationship of Prevention to Care; AIDS Clinical Trial Group 076 Implementation Update; National Health Service Corps; Health Professions Training; Evaluation; and the Reauthorization of the Ryan White Comprehensive AIDS Resources and Emergency Act.

Anyone requiring information regarding the subject Committee should contact Judy Hagopian, AIDS Program Office, Health Resources and Services Administration, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0866.

* * * * *

*Name:* Maternal and Child Health Research Grants Review Committee.

*Date and Time:* May 24–26, 1995, 9:00 a.m.

*Place:* Holiday Inn Crowne Plaza, Twinbrook Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on May 24, 1995, 9:00 a.m.–10:00 a.m.

Closed for remainder of meeting.

*Purpose:* To review research grant applications in the program area of maternal and child health administered by the Maternal and Child Health Bureau.

*Agenda:* The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on May 24 at 10:00 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Acting Associate Administrator for Policy Coordination, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, D.P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Agenda Items are subject to change as priorities dictate.

Dated: March 24, 1995.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 95–7704 Filed 3–28–95; 8:45 am]

BILLING CODE 4160–15–P

## Social Security Administration

## Privacy Act of 1974; Report of New Routine Use

**AGENCY:** Social Security Administration (SSA), Department of Health and Human Services (HHS).

**ACTION:** New routine use.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (11)), we are issuing public notice of our intent to establish a new routine use applicable to the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058. The proposed routine use will allow SSA to verify the personal identification information presented to State motor vehicle agencies (MVA) by individuals seeking drivers' licenses and identification cards. This verification service will assist those MVAs' efforts to determine whether the identification information used by individuals to obtain such documents is correct.

We invite public comment on this publication.

**DATES:** We filed a report of a new routine use with the Chairman, Committee on Government Reform and Oversight of the House of Representatives, the Chairman, Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget on March 8, 1995. The routine use will become effective as proposed, without further notice on May 8, 1995, unless we receive comments on or before that date that would result in a contrary determination.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235. Comments may be faxed to (410) 966–0869. All comments received will be available for public inspection at that address by making arrangements with the contact person below.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Alicia Matthews, Social Insurance Specialist, Office of Disclosure Policy, Social Security Administration, 3–D–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 410–965–1723.

**SUPPLEMENTARY INFORMATION:**

### A. Discussion of Proposed Routine Use

Under the national policy established by section 205(c)(2)(C)(i) of the Social Security Act (the Act) States are authorized to use the SSN in the administration of their drivers' license laws for the purpose of establishing the identity of individuals affected by such laws, and may require any individual affected by such laws to furnish to the States (or any agency having administrative responsibility for such laws) his or her SSN. Some MVAs use the SSN to establish the identity of individuals being issued drivers' licenses. Some MVAs also use the SSN to establish the identity of individuals being issued identification cards. Federal law does not specifically authorize the States' use of the SSN for the issuance of general identification cards.

Documents such as the driver's license and the State-issued identification card can be used to establish identity for Federal programs and State and local public assistance programs. The driver's license and identification card can also be used to establish identity for personal and commercial purposes, such as establishing credit and check cashing. State agencies which issue identification documents such as drivers' licenses and identification cards are likely points at which persons might attempt to use SSNs that were not assigned to them in schemes to deceive those agencies and obtain the desired documents. Section 208(a)(7) of the Act provides that any person who, with intent to deceive, represents that an SSN is the one that was assigned by the Secretary of HHS to him or her, when in fact it was not assigned to that person, is guilty of a felony, and upon conviction may be fined, imprisoned, or both.

SSA considers performing verification services for State MVAs as a legitimate function in the administration of the Act. Although the verification services are not specifically mentioned in section 205(c)(2)(C)(i) of the Act, they will assist States in using SSNs as authorized by that statute in administering their driver's license laws. In addition, such verification services will help the States detect and

deter the illegal conduct described in section 208(a)(7) of the Act.

Moreover, verification of information identifying individuals in MVA records would have a positive impact on the administration of Federal and State programs administered by State and local governments, such as those providing medical services, cash payments, child support enforcement and other types of assistance. MVA records are useful to these agencies, and they are required or authorized by law to use SSNs to identify individuals in connection with these programs. *See,*e.g., sections 205(c)(2)(C)(i) and (v) and 1137 of the Act (42 U.S.C. 405(c)(2)(C)(i) and (v) and 1320b-7). By assisting MVAs with their efforts to obtain and maintain accurate information identifying individuals who apply for, or are issued, drivers' licenses or identification documents, SSA would help make MVA records more useful to these assistance programs.

SSA disclosure of information from the Master Files of SSN Holders and SSN Applications system of records under currently published routine uses may involve providing the correct SSN to an entity when it either has no SSN, or has an incorrect one for a particular individual, or verifying only the fact that an entity has the SSN associated with a particular individual in this system of records. Under the proposed routine use, SSA would only verify that the personal identifying data submitted by the State MVAs match or do not match data in this system of records, and identify the data elements that do not match. SSA would not disclose the data contained in this system of records (such as name or SSN) if the MVA has non-matching data.

The proposed routine use statement will read as follows:

*''Personal identification data (i.e., name, SSN, and date of birth) concerning individuals who apply for, or are issued, drivers' licenses or other identification documents may be verified for State motor vehicle agencies (MVA) that issue such licenses or documents. In performing such 'verification,' SSA may indicate whether the identifying data furnished by a State MVA concerning an individual match or do not match data maintained in this system of records, and SSA may identify the particular data elements that do not match. SSA will not disclose information from this system of records which does not match the information furnished by the State MVA.''*

We are not publishing in its entirety the notice of the system of records to which we are adding the proposed new routine use statement. A notice of that system, the Master Files of Social Security Number (SSN) Holders and SSN Applications, HHS/SSA/OSR, 09–60–0058, was last published in the **Federal Register** at 60 FR 12964, March 9, 1995.

### B. Compatibility of Proposed Routine Use

We are proposing the changes discussed above in accordance with the Privacy Act (5 U.S.C. 552a(a)(7), (b)(3), and (e)(11)) and our disclosure regulation (20 CFR part 401).

The Privacy Act permits us to disclose information about individuals without their consents for a routine use, i.e., where the information will be used for a purpose that is compatible with the purpose for which we collected the information. The drivers' licenses and identification cards issued by the MVAs to administer their laws also can be used to establish the identity of individuals for Federal program purposes, and purposes of State and local public assistance programs.

SSA collects and maintains SSNs and other personal identification data in the Master Files of Social Security Number (SSN) Holders and SSN Applications in order to identify and retrieve information about individuals in SSA records, to administer programs for which SSA is responsible, and to detect the use of an SSN by a person to whom that SSN was not assigned. As mentioned above, State MVAs use such information for the same or similar purposes. Providing verification services to State MVAs would assist the implementation of the national policy described in section 205(c)(2)(C)(i) of the Act, would assist the detection and deterrence of conduct that violates section 208(a)(7) of the Act, and would support the effective and efficient administration of various assistance programs by State and local governments. For these reasons, we find that providing verification services to State MVAs serves purposes that are compatible with purposes for which SSA collects the identification information that would be disclosed in performing those services and meets the criteria of the Privacy Act for the establishment of a routine use. Providing such services under a routine use is also permitted by 20 CFR 401.115.

### C. Effect of the Proposal on Individual Rights

As discussed above, the proposed new routine use will permit SSA to verify the identification data used by State MVAs to administer their driver's license and identification card programs. SSA will follow all statutory and regulatory requirements for disclosure. SSA will perform verification services under written agreements which stipulate that MVAs will only collect, verify and redisclose SSNs as provided for by Federal and State law. SSA will safeguard the information that it receives from MVAs for verification to prevent unauthorized access to personal information. Thus, we do not anticipate that the disclosures authorized by the new routine use statement will have any unwarranted effect on the privacy or other rights of individuals.

Dated: March 8, 1995.

**Shirley S. Chater,**

*Commissioner of Social Security.*

[FR Doc. 95–7713 Filed 3–28–95; 8:45 am]

**BILLING CODE 4190–29–P**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

**[NV–030–95–1990–02]**

## Environmental Statements; Availability, etc.: Miramar Gold Corp., Lyon County, NV

**AGENCY:** Bureau of Land Management, Carson City District Office.

**ACTION:** Notice of intent to prepare an environmental impact statement on a plan of operations for Miramar Gold Corporation in Lyon County, Nevada; and notice of scoping period and public meetings.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR Part 3809, the Bureau of Land Management will be directing the preparation of an Environmental Impact Statement to be produced by a third-party contractor on the impacts of a proposed Plan of Operations for gold mining at Talapoosa by Miramar Gold Corporation, in Lyon County, Nevada. The Bureau invites comments on the scope of the analysis.

**EFFECTIVE DATE:** An open-house meeting will be held April 19, 1995 at the Bureau of Land Management, Carson City District Office, 1535 Hot Springs Road, Carson City, NV, and again on April 20, 1995 at the Mcatee Building, 2495 Ft. Churchill Rd., Silver Springs, NV, to allow the public an opportunity to identify issues and concerns to be addressed in the Environmental Impact Statement. Both meetings are scheduled from 4:00 pm to 7:00 pm. Representatives of Miramar Gold Corporation will be available to answer

questions about the Plan of Operations. Additional scoping meetings may be held as appropriate. Written comments on the Plan of Operations and the scope of the Environmental Impact Statement will be accepted until May 5, 1995.

A Draft Environmental Impact Statement is expected to be completed by late summer 1995 and made available for public review and comment. At that time a Notice of Availability of the Draft Environmental Impact Statement will be published in the **Federal Register**. The comment period on the Draft Environmental Impact Statement will be 60 days from the date the Notice of Availability is published.

**FOR FURTHER INFORMATION CONTACT:** Scoping comments may be sent to: District Manager, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706. ATTN: Talapoosa Environmental Impact Statement Project Manager.

For additional information, write to the above address or call Ron Moore at (702) 885–6155.

**SUPPLEMENTARY INFORMATION:** Miramar Gold Corporation of Reno, Nevada has submitted a Plan of Operations for the Talapoosa Mine located approximately 3 miles north of Silver Springs, Nevada. The proposed operation will include an open-pit mine, tailing facilities, heap leach facilities, waste rock dumps, water treatment facilities, a milling complex as well as administrative and maintenance buildings. The proposal is expected to disturb 570 acres of public and private land.

The issues expected to be analyzed in the Environmental Impact Statement are: Surface and groundwater quantity and quality, mine pit water quality, threatened and endangered species, wildlife, cultural resources, reclamation, hazardous materials, air quality, soils and watershed, vegetation, visual resources, recreation and wilderness, social and economic values, geology, paleontology, grazing management, access and land use, noise, and cumulative impacts. These topics will be evaluated by an interdisciplinary team and will include review of the proposed Plan of Operations as well as other pertinent environmental documents and studies.

A range of alternatives (including but not limited to alternative reclamation measures and the no-action alternative), as well as mitigating measures, will be considered to evaluate and minimize environmental impacts and to assure that the proposed action does not result in undue or unnecessary degradation of public lands.

Federal, state and local agencies and other individuals or organizations who may be interested in or affected by the Bureau's decision on the Plan of Operations are invited to participate in the scoping process with respect to this environmental analysis. These entities and individuals are also invited to submit comments on the Draft Environmental Impact Statement.

It is important that those interested in the Plan of Operations participate in the scoping and commenting processes. To be most helpful, comments should be as specific as possible.

The tentative project schedule is as follows:

Begin Public Comment Period—April 1995
Issuance of Draft Environmental Impact Statement—August 1995
File Final Environmental Impact Statement—November 1995
Record of Decision—January 1996
Begin Construction of Operation—Spring of 1996.

The Bureau of Land Management's scoping process for the Environmental Impact Statement will include: (1) Identification of issues to be addressed; (2) Identification of viable alternatives; (3) Notification of interested groups, individuals and agencies so that additional information concerning these issues, or other additional issues, can be obtained.

Dated: March 21, 1995.

**John O. Singlaub,**

*Carson City District Manager.*

[FR Doc. 95–7644 Filed 3–28–95; 8:45 am]

**BILLING CODE 4310–HC–P**

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**[CO–034–95–1220–00]**

## Designation Order; San Miguel County, CO; Establishment of 7 Day Camping Limit on Public Lands Within San Miguel and Montrose Counties, Colorado

**AGENCY:** Bureau of Land Management, Uncompahgre Basin Resource Area, Montrose District, Montrose, Colorado.

**ACTION:** Amendment of existing 14 day camping stay limits on 32,641 acres of public lands administered by the Bureau of Land Management as a San Miguel River Special Recreation Management Area (SRMA) and Area of Critical Environmental Concern (ACEC) in San Miguel and Montrose Counties, Colorado.

**SUMMARY:** Notice is given that person(s) may occupy a designated camping site or multiple sites on BLM Public Lands not closed or otherwise restricted to camping within the San Miguel River Special Recreation Management Area located in the San Miguel and Montrose Counties, Colorado, for a total period of not more than seven (7) days within a thirty (30) day period.

Following the seven (7) day period, person(s) may not relocate on public lands within the Special Recreation Management Area defined to the north by the town of Pinon in Montrose County, approximately nine miles northwest of the town of Norwood, and to the south by Deep Creek, approximately 7 miles east of the town of Telluride on the San Miguel River, until completion of the thirty (30) day period.

The seven (7) day limit may be reached either through a number of separate visits or through a period of continuous occupation of a site. Under special circumstances and upon request, the authorized officer may give written permission for extension of the seven (7) day limit.

Additionally, no person may leave personal property unattended in designated campgrounds, recreation developments, or anywhere else on BLM public lands within the State of Colorado for a period of more than forty-eight (48) hours without written permission from the authorized officer.

This camping stay limit does not apply to Long Term Visitor Use Areas which may be so designated in the future by the BLM Montrose District office.

**DATES:** This camping stay limit will be effective May 1, 1995.

**SUPPLEMENTARY INFORMATION:** This camping stay limit is being established to assist the Bureau in reducing the incidences of long-term occupancy trespass being conducted under the guise of camping on public lands within the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern. Of equal importance is the problem of long-term camping which precludes equal opportunities for other members of the public to camp in the same area, which creates user conflicts.

The restriction is also necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping. The restriction applies to all public land users except those who have obtained prior approval from the authorized officer, and those who are specifically allowed a longer stay under terms of a Special Recreation Permit.

CFR Title 43, Chapter II, Part 8360, Subpart 8364.1, Subpart 8365, Subpart 8365.1–2, 8365.1–6, and 8365.2–3 provide BLM authority for establishing

this camping stay limit. The decision for reducing the fourteen day (14) limit to seven (7) days is in compliance with the Bureau's San Juan/San Miguel Resource Management Plan Amendment; San Miguel River ACEC and SRMA, 1993.

8360.0–7 PENALTIES: Violations of any regulations in this part by a member of the public, except for the provisions of 8365.1–7, are punishable by fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Violations of supplementary rules authorized by 8365.1–6 are punishable in the same manner.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this camping stay limit for public lands administered by the BLM in San Miguel and Montrose Counties in the State of Colorado may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Basin Resource Area, Montrose District, 2505 South Townsend Ave., Montrose, Colorado 80401, (970) 249–6047.

Dated: March 22, 1995.

**Philip Dwyer,**

*Acting District Manager.*

[FR Doc. 95–7681 Filed 3–28–95; 8:45 am]

**BILLING CODE 4310–JB–M**

**[NM–010–1610–00]**

## Intent To Prepare a Rio Puerco Resource Area Resource Management Plan (RMP) Amendment/Environmental Impact Statement (EIS) for El Malpais National Conservation Area (NCA) and Chain of Craters Wilderness Study Unit (WSU); Albuquerque District, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare a RMP amendment/EIS and invitation to participate in developing a management plan for the El Malpais NCA including recommendation on the wilderness suitability of the Chain of Craters WSU.

**SUMMARY:** The Bureau of Land Management, Albuquerque District is initiating the preparation of the El Malpais NCA management plan and EIS. This action will amend the Rio Puerco RMP. It will include a recommendation on the wilderness suitability of the Chain of Craters WSU and may consider establishment of Areas of Critical Environmental Concern. Proposed planning criteria and dates of public scoping meetings are also included herein.

**DATES:** Written comments regarding issues to be addressed in developing the draft El Malpais Plan must be submitted on or before May 19, 1995. In addition to written comments, two public scoping meetings will be held in April (see below.)

**ADDRESSES:** Comments should be sent to the El Malpais Planning Team, BLM, Albuquerque District, 435 Montano NE., Albuquerque, NM 87107–4935.

**FOR FURTHER INFORMATION CONTACT:** Kent Hamilton at 505–761–8746 or Patty McLean at 505–761–8728, at 435 Montano NE., Albuquerque, NM 87107–4935.

**PUBLIC MEETINGS:** The public is invited to attend two public meetings to identify issues to be considered in the draft El Malpais Plan and Chain of Craters wilderness suitability analysis. The meetings will be held at the following times and locations:

| Date/time | Location |
|---|---|
| April 25, 1995 ..... 7 p.m.–10 p.m ..... | National Guard Armory. 2001 East Santa Fe Avenue, Grants, NM. |
| April 27, 1995 ..... 7 p.m.–10 p.m ..... | Amberley Suite Hotel. 7620 Pan American Freeway NE., Albuquerque, NM. |

**SUPPLEMENTARY INFORMATION:** The El Malpais NCA, near Grants, New Mexico was established by Public Law 100–225 on December 31, 1987. The NCA encompasses 262,600 acres. The Chain of Craters WSU, established through the same legislation, totals 18,300 acres and is included within the NCA. Between 1988 and 1991, BLM developed a General Management Plan (GMP) for the El Malpais NCA. BLM considered the GMP an ''activity plan'' and completed an environmental assessment, rather than a formal RMP amendment and EIS. The GMP was appealed to the Interior Board of Land Appeals (IBLA) by the New Mexico Wilderness Coalition on the grounds that the plan required an EIS and in 1994 IBLA decided in favor of the appellants and directed BLM to prepare an RMP amendment. The proposed El Malpais Plan and EIS will direct the management of the NCA for the next ten to twenty years and will address all requirements of PL 100–225 and the Federal Land Policy and Management Act, including a suitability analysis and recommendation for the Chain of Craters Wilderness Study Area. The planning area will include all lands within or contiguous to the NCA boundary, including lands acquired since the NCA was established.

The El Malpais plan will be developed by an interdisciplinary team representing Archeology, Range, Outdoor Recreation, Interpretation and Wildlife Biology. Additional technical support will be provided by other Technical Specialists as needed.

### Anticipated Planning Issues

Suggested issues to be addressed in the plan include the following: American Indian Issues; Boundary Adjustments; Cultural Resources; Desired Plant Communities; Facility Development; Interpretation and Public Education; Natural Resources; Range Management; Recreation; Transportation (including ORV designation); Wilderness (WSA and designated wilderness areas); and Wildlife Habitat.

### Planning Criteria

Proposed planning criteria for development of the El Malpais Plan are listed below. Public comment is invited. Planning criteria may be changed as planning proceeds based on public suggestions and the findings of various studies and assessments.

1. Actions must comply with laws, executive orders, and regulations.

2. In each planned action, resource outputs must be reasonable and achievable.

3. Planned actions will sustain the productivity and diversity of natural systems in the NCA.

4. The plan will be developed using the best available scientific information as the cornerstone for resource allocations and other land management decisions in the NCA. The plan will incorporate the work done for the GMP published in 1991 as well as new information attained since establishment of the NCA.

5. The BLM will use an interdisciplinary approach to land management.

6. The BLM will base planning and management on long-term horizons and goals.

7. To the extent possible, this plan will be consistent with the lands and policies of tribes, other federal agencies, and state and local governments.

8. Consideration will be given to designating special administrative management areas within the planning area, such as Areas of Critical Environmental Concern and Research Natural Areas.

9. Planned actions will contribute to or sustain the health of the land. Monitoring and inventory information will be used to assess the effect of management actions.

### Public Participation

Public participation activities during the planning process will include consultation with affected users and

other agencies, meetings with interested groups and individuals, mail outs, media notices, **Federal Register** notices, public meetings, and distribution of the Plan and EIS for comments.

Complete records of the planning process will be available for public review at the Albuquerque District at the address above.

Dated: March 20, 1995.

**Michael R. Ford,**

*District Manager.*

[FR Doc. 95–7645 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–FB–M

**[WY–930–1430–O1; WYW 123105]**

## Cancellation of Proposed Withdrawal, Correction of Decision Record; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice terminates a proposal to withdraw 5,417.43 acres of Federal surface and mineral estate, and another 40.00 acres of Federal mineral estate only, in Bighorn County to protect significant paleontological resource values discovered near Greybull, Wyoming. The public lands and mineral estate were temporarily closed for two years from surface entry and mining location to allow various studies and analyses to be made in support of a final decision concerning the proposed withdrawal. The land automatically became open to entry under the general land laws, including the mining laws, on January 15, 1994, when the temporary segregation expired. The lands have been, and remain open to mineral leasing.

This notice also corrects the acreage in the Decision Record for the Brown/Howe Dinosaur Area Environmental Assessment (WY–017–EA3–056), dated January 20, 1995. The correct acreage of public land surface designated an Area of Critical Environmental Concern is 5,417.43 acres, instead of 5,457.43 acres.

**EFFECTIVE DATE:** March 29, 1995.

**FOR FURTHER INFORMATION CONTACT:** Tamara Gertsch, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, (307) 775–6115.

**SUPPLEMENTARY INFORMATION:** A Notice of Proposed Withdrawal was published in the **Federal Register** on January 16, 1992, which segregated for two years the Federal surface and mineral estate described in the notice from entry under the general land laws, including the mining laws, subject to valid existing rights. The Bureau of Land Management has determined withdrawal of Federal land and Federal mineral estate is not needed to protect the paleontological resources present. The Cody Resource Management Plan contains management prescriptions for the area which afford adequate protection. The following described area was designated on January 20, 1995, as the Brown/Howe Dinosaur Area ACEC.

**Sixth Principal Meridian, Bighorn County, Wyoming**

T. 54 N., R. 91 W.,
Sec. 4, lots 1–2, S½NE¼, SE¼SW¼, SE¼;
Sec. 5, SE¼NE¼, SE¼SW¼, SE¼;
Sec. 7, lots 9, 10, and 13;
Sec. 8, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 9, lots 1–14;
Sec. 16, NE¼, SW¼;
Sec. 17, W½NE¼, W½, SE¼;
Sec. 18, lots 5–11;
Sec. 19, E½, NE¼NW¼;
Sec. 20, N½, N½SW¼, SW¼SW¼, E½SE¼;
Sec. 21, N½NW¼, SW¼NW¼, W½SW¼;
Sec. 29, E½NE¼, SW¼NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 30, NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 31, lot 5;
Sec. 32, W½NE¼, NW¼, NE¼SW¼, W½SE¼.

The area described contains 5,417.43 acres in Bighorn County, Wyoming.

Dated: March 17, 1995.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 95–7646 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–22–P

## National Park Service

### Notice of Intent To Issue a Prospectus for the Operation of Hotel and Related Facilities in Kings Canyon National Park

**SUMMARY:** The National Park Service is seeking to award a concession contract for the future operation and improvement of existing visitor facilities within Kings Canyon National Park, which is part of Sequoia and Kings Canyon National Parks.

**SUPPLEMENTARY INFORMATION:** The concession facilities, which include overnight accommodations, food service, retail and other related operations, are located at the Grant Grove and Cedar Grove areas of the park. Grant Grove is a year-round operation, and Cedar Grove operates only during the summer.

To be placed on the mailing list to receive this prospectus send your name and address to: National Park Service/Concession Program Management Division, Attention: Kings Canyon Prospectus, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for One Hundred and Twenty (120) days under the terms described in the Prospectus. The One Hundred and Twenty (120) day application period will begin with the release of the Prospectus, is expected to occur shortly after the publication of this notice.

Dated: November 16, 1994.

**Patricia L. Neubacher,**

*Acting Regional Director, Western Region.*

[FR Doc. 95–7728 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

### Notice of Intent To Issue a Prospectus for the Construction and Operation of Hotel and Related Facilities in Sequoia National Park

**SUMMARY:** The National Park Service is seeking to award a new concession contract for the construction of new visitor facilities and continued operation of certain existing facilities within Sequoia National Park, which is part of Sequoia and Kings Canyon National Parks.

**SUPPLEMENTARY INFORMATION:** The development to be constructed includes a 414 room hotel, food service and other related commercial and support facilities. Extensive site preparation and infrastructure work have already been completed by the Government.

To be placed on the mailing list to receive this prospectus send your name and address to: National Park Service, Concession Program Management Division, 600 Harrison Street, Suite 600, San Francisco, CA 94107–1372, or call: (415) 744–3981—Teresa Jackson.

Applications will be accepted for One Hundred and Twenty (120) days under the terms described in the Prospectus. The One Hundred and Twenty (120) day application period will begin with the release of the Prospectus, which will occur shortly after the publication of this notice.

Dated: November 16, 1994.

**Patricia L. Neubacher,**

*Acting Regional Director, Western Region.*

[FR Doc. 95–7729 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

### General Management Plan, Environmental Impact Statement, Isle Royale National Park, Michigan

**AGENCY:** National Park Service, Department of the Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for a

general management plan, Isle Royale National Park, Keweenaw County, Michigan.

**SUMMARY:** The National Park Service, in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) will prepare an environmental impact statement (EIS) on a general management plan for Isle Royale National Park.

Isle Royale National Park currently operates under a Master Plan written in 1963. Because the master plan is severely outdated, the park does not have a comprehensive plan to set forth the basic management philosophy for the park, direct decision-making, and provide strategies for addressing issues and achieving management objectives. This planning effort will result in a comprehensive general management plan that guides the future use of resources and facilities; identifies future needs for facility types; clarifies research and resource management needs and priorities; encompasses preservation of natural and cultural resources; and addresses changing levels of park visitation over the next 10–15 year period. Carrying capacity issues will be addressed by incorporating the Visitor Experience and Resource Protection (VERP) process into the general management plan effort.

The EIS will describe a range of alternatives for management of Isle Royale National Park, including the no action alternative, and analyze their impacts on natural and cultural resources, recreation use, and any other current uses.

Major issues to be addressed in the EIS will include the following:

1. Island visitation has outgrown park infrastructure and operations. This contributes to crowding that already occurs in some areas due to the commercial boat schedules.

2. Increasing motorized boat use is taxing park operations and infrastructure and is causing friction between motorized and nonmotorized users.

3. Visitor facilities are deteriorating. It is increasingly difficult and expensive to replace these facilities due to laws passed since 1963. It is currently undetermined what facilities are appropriate on the island and if facilities should be enlarged to respond to the increasing visitation or if visitation should be limited and facilities reduced.

Additional issues to be addressed in the EIS may be identified during the scoping process. Federal, State, local agencies, and individuals or organizations are invited to participate in the scoping process. The scoping process includes:

1. Identification of potential issues.
2. Identification of potential impact topics and topics to be analyzed in depth.
3. Determination of potential cooperating agencies and assignment of responsibilities.

Public scoping will begin in summer of 1995 and continue through the fall. Prior public notice of scoping processes will be issued. The public is encouraged to send written comments and suggestions concerning preparation of the EIS to Mr. Doug Barnard, Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931–1895. The National Park Service will accept comments at this address at any time during the EIS process. However, to facilitate timely identification of issues and impact topics to be addressed in the EIS, the National Park Service recommends that initial comments be submitted by October 31, 1995.

The responsible official is William W. Schenk, Regional Director, Midwest Region, National Park Service, Omaha, Nebraska.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Isle Royale National Park, 800 East Lakeshore Drive, Houghton, Michigan 49931–1895, phone 906–337–4991 (summer) or 906–482–0986 (winter).

Dated: March 20, 1995.

**William W. Schenk,**

*Regional Director, Midwest Region.*

[FR Doc. 95–7738 Filed 3–28–95; 8:45 am]

**BILLING CODE 4310–70–P**

## Aniakchak National Monument Subsistence Resource Commission; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Subsistence Resource Commission meeting.

**SUMMARY:** The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission.

The following agenda items will be discussed:

(1) Introduction of commission members and guests.
(2) Superintendent's welcome:
  a. Review of SRC function and purpose.
  b. Aniakchak National Monument subsistence management report.
(3) Old business:
  a. Review and approve minutes from last meeting.
  b. Status of hunting plan recommendations.
  c. Election of chairperson.
(4) New business:
  a. Federal Subsistence Program Update.
  b. Resident zone community boundaries.
  c. Aniakchak National Monument Resource Management Plan.
  d. Public and other agency comments.
(5) Subsistence hunting program recommendations work session:
  a. Finalize recommendations.
  b. Draft new recommendations.
(6) Adjournment.

**DATES:** The meeting will begin at 9:00 a.m. on Thursday, April 6, and conclude at 12:00 noon on Friday, April 7, 1995.

**LOCATION:** The meeting will be held at the National Park Service Office in King Salmon, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Bill Pierce, Superintendent, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

**David B. Ames,**

*Acting Regional Director.*

[FR Doc. 95–7672 Filed 3–28–95; 8:45 am]

**BILLING CODE 4310–70–M**

## Jimmy Carter National Historic Site Advisory Commission; Meeting

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Advisory Commission Meeting.

**SUMMARY:** Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 8:30 a.m. to 4:00 p.m., at the following location and date.

**DATES:** April 5–6, 1995.

**LOCATION:** The Carter Center, One Copenhill, Atlanta, Georgia 30307.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1 Box 800, Andersonville, Georgia 31711, (912) 924–0343.

**SUPPLEMENTARY INFORMATION:** The purpose of the Jimmy Carter National

Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows:

Dr. Steven Hochman
Dr. James Sterling Young
Dr. Donald B. Schewe
Dr. Henry King Stanford
Dr. Barbara Fields
Director, National Park Service, Ex-Officio member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: March 22, 1995.

**Frank Catroppa,**

*Acting Regional Director, Southeast Region.*

[FR Doc. 95–7673 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

## Pea Ridge National Military Park Advisory Team; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Pea Ridge National Military Park Advisory Team will be held at 6:00 p.m., on Thursday, April 20, 1995, in the park visitor center auditorium, 15930 Highway 62, Garfield, Arkansas.

The Pea Ridge National Military Park Advisory Team was established under authority of section 3 of Public Law 91–383 (16 U.S.C. 1a–2(c)) to provide a forum for dialogue between community representatives and the Pea Ridge National Military Park on management issues affecting the park and the community.

The matter to be discussed at this meeting includes: Boundary Study.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Pea Ridge National Military Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Steve Adams, Superintendent, Pea Ridge National Military Park, P.O. Box 700, Pea Ridge, AR 72751–0700, Telephone 501/451–8122.

Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Pea Ridge National Military Park.

Dated: March 20, 1995.

**Ernest W. Ortega,**

*Regional Director, Southwest Region.*

[FR Doc. 95–7674 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–70–M

## Office of Surface Mining Reclamation and Enforcement

### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related form and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1029–0048), Washington, D.C. 20503, telephone 202–395–7340.

*Title:* Permanent Program Performance Standards—Underground Mining Activities, 30 CFR Part 817

*OMB approval number:* 1029–0048

*Abstract:* Sections 515 and 516 of Public Law 95–87 provide that permittees conducting surface mining operations with underground mining activities shall meet applicable performance standards of the Act. The information is used by the regulatory authority in monitoring and inspecting the operations for compliance with the Act.

*Bureau form number:* None

*Frequency:* On occasion, quarterly, and annually

*Description of respondents:* Underground Coal Mining Operators

*Estimated Completion Time:* 4 hours

*Annual Responses:* 74,933

*Annual Burden Hours:* 301,772

*Bureau clearance officer:* John A. Trelease (202) 343–1475

Dated: January 10, 1995.

**Andrew F. DeVito,**

*Chief, Branch of Environmental and Economic Analysis.*

[FR Doc. 95–7627 Filed 3–28–95; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–699 (Final)]**

### Commission Determination To Conduct a Portion of the Hearing ''in Camera''

**AGENCY:** International Trade Commission.

**ACTION:** Closure of a portion of a Commission hearing to the public.

In the Matter of: Stainless Steel Angle from Japan.

**SUMMARY:** Upon request of respondent Aichi Steel Works, Ltd. (Aichi) and petitioner Slater Corporation (Slater) in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for March 30, 1995, *in camera. See* Commission rules 207.23(d), 201.13(m) and 201.35(b)(3) (19 CFR 207.23(d), 201.13(m) and 201.35(b)(3), as amended, 59 FR 66,719 (Dec. 28, 1994)). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1), as 0amended, 59 FR 66,719 (Dec. 28, 1994)).

**FOR FURTHER INFORMATION CONTACT:** Lyle Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3107. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that Aichi and Slater have justified the need for a closed session. Because petitioner Slater is the sole domestic producer, a full discussion of petitioner's financial condition and of many of the indicators that the Commission examines in assessing material injury by reason of subject imports can only occur if at least part of the hearing is held *in camera.* In addition, because certain information is contained only in confidential questionnaire responses of importers and producers and there are only three

mill depots that sell the subject imports, any discussion of issues relating to this information will necessitate disclosure of business proprietary information (BPI). Thus, such discussions can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioner and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a presentation including BPI by petitioner and for questions from the Commission relating to the BPI, followed by a presentation including BPI by respondents, followed by questions from the Commission relating to the BPI. For any *in camera* session the room will be cleared of all persons except: those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. *See* 19 CFR 201.35(b)(1), (2). In addition, if petitioner's BPI will be discussed in the *in camera* session, personnel of petitioner will also be granted access to the closed session while such data is discussed. Similarly, if BPI of respondents' witnesses will be discussed in the *in camera* session, respondents' witnesses will also be granted access to the closed session while such data is discussed. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

**Authority:** The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Stainless Steel Angle from Japan*, Inv. No. 731–TA–699 (Final) may be closed to the public to prevent the disclosure of BPI.

By order of the Commission.

Issued: March 27, 1995.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 95–7859 Filed 3–28–95; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

**New Collection**

(1) Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act for Tribal Governments

(2) Violence Against Women Program Office, United States Department of Justice.

(3) Primary—State, Local or Tribal Government, Others—None. The Crime Act of 1994 enacted the Violence Against Women Program. This program awards grant money to the states, territories, and Indian tribal governments to combat violence against women. The actual legislation dictates that in order to receive federal monies, these grantees must certify that rape exams will be paid for by some entity other than the victim, and the victim will also not incur the cost of filing fees for criminal charges.

(4) 20 annual respondents at .15 hours per response.

(5) 5 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 23, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 95–7685 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–21–M

### Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) Who will be asked or required to respond, as well as a brief abstract;

(4) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(5) An estimate of the total public burden (in hours) associated with the collection; and,

(6) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the Department of Justice Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs,

Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/ Information Resources Management/ Justice Management Division Suite 850, WCTR, Washington, DC 20530.

**New Collection**

(1) Certification of Compliance with the Statutory Eligibility Requirements of the Violence Against Women Act.

(2) Violence Against Women Program Office, United States Department of Justice.

(3) Primary = State, Local or Tribal Government, Others = None. The Crime Act of 1994 enacted the Violence Against Women Program. This program awards grant money to the states, territories, and Indian tribal governments to combat violence against women. The actual legislation dictates that in order to receive federal monies, these grantees must certify that rape exams will be paid for by some entity other than the victim, and the victim will also not incur the cost of filing fees for criminal charges.

(4) 54 annual respondents at .15 hours per response.

(5) 13.5 annual burden hours.

(6) Not applicable under Section 3504(h) of Public Law 96–511.

Public comment on this item is encouraged.

Dated: March 23, 1995.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 95–7686 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–21–M

## Drug Enforcement Administration

**[Docket No. 94–70]**

### Zack B. Brown, M.D.; Denial of Application

On February 25, 1994, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Zack B. Brown, M.D. (Respondent) of Detroit, Michigan, proposing to deny his application for registration as a practitioner. The statutory basis for the Order to Show Cause was the Respondent's registration would be inconsistent with the public interest pursuant to 21 U.S.C. 823(f).

Respondent, through counsel, requested a hearing on the issues raised in the Order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner.

On September 30, 1994, following prehearing procedures and prior to any evidentiary hearing, the Government filed a motion for summary disposition alleging that Respondent no longer held state authorization to handle controlled substances following the suspension of Respondent's license to practice medicine in Michigan by the Michigan Board of Medicine. Respondent did not file a response to the Government's motion and did not deny that his state license to handle controlled substances had been suspended.

On October 17, 1994, the administrative law judge entered her Opinion and Recommended Decision granting the Government's motion for summary disposition and recommending that the Respondent's application for DEA Certificate of Registration be denied. No exceptions were filed by either party.

On November 21, 1995, the administrative law judge transmitted the record to the Deputy Administrator. After a careful consideration of the record in its entirely, the Deputy Administrator enters his final order in this matter pursuant to 21 CFR 1316.67, based on findings of fact and conclusions of law as set forth herein. On August 17, 1994, the Michigan Board of Medicine summarily suspended the Respondent's state license to practice medicine. On September 26, 1994, an Order Continuing the Summary Suspension of August 17 was issued by the Michigan Office of Legal Services (Department of Commerce). Judge Bittner found that, by virtue of the suspension of Respondent's license to practice medicine in Michigan, it was reasonable to infer, and Respondent did not deny, that because he is not authorized to practice medicine in Michigan, he also is not authorized to handle controlled substances within that state. Judge Bittner concluded that DEA has no authority to register a practitioner, unless that practitioner is authorized by the state to dispense controlled substances. The DEA has consistently held this position. *See Bobby Watts, M.D.*, 53 FR 11919 (1988); *Lawrence R. Alexander, M.D.*, 57 FR 22256 (1992).

In cases such as the present, where a Respondent is not authorized to handle controlled substances in the state in which he proposes to practice, a motion for summary disposition is properly entertained. It is well settled that where no question of fact exists, or where the material facts are agreed, a plenary administrative proceeding is not required. *See Phillip E. Kirk, M.D.*, 48 FR 32877 (1983), aff'd sub nom *Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). Congress did not intend for administrative agencies to conduct hearings where no issues remain in dispute. *United States v. Consolidated Mines and Smelting Company, Ltd.*, 445 F.2d 432, 453 (9th Cir. 1971); *N.L.R.B. v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977).

The Deputy Administrator adopts the opinion and recommended decision of the administrative law judge in its entirety. Based on the foregoing, the Deputy Administrator concludes that Respondent's application for registration must be denied. 21 U.S.C. 823(f) and 824(a)(3). Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority invested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration of Zack B. Brown be, and hereby is, denied. This order is effective April 28, 1995.

Dated: March 23, 1995.

**Stephen H. Greene,**

*Deputy Administrator.*

[FR Doc. 95–7642 Filed 3–28–95; 8:45 am]

BILLING CODE 4410–09–M

## Immigration and Naturalization Service

**[INS No. 1689–95; AG Order No. 1959–95]**

**RIN 1115–AC30**

### Extension of Designation of Liberia Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends, until March 28, 1996, the Attorney General's designation of Liberia under the Temporary Protected Status program provided for in section 244A of the Immigration and Nationality Act, as amended (''the Act''). Accordingly, eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, may re-register for Temporary Protected Status and extension of employment authorization. This re-registration is limited to persons who already registered for the initial period of Temporary Protected Status, which ended on March 27, 1992. In addition during the extension period, some aliens may be eligible for late initial registration pursuant to 8 CFR 240.2(f)(2).

**EFFECTIVE DATES:** This extension of designation is effective on March 29,

1995, and will remain in effect until March 28, 1996. Re-registration procedures become effective on March 29, 1995, and will remain in effect until April 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–5014.

**SUPPLEMENTARY INFORMATION:** Under section 244A of the Act, as amended by section 302(a) of Public Law 101–649 and section 304(b) of Public Law 102–232 (8 U.S.C. 1254a), the Attorney General is authorized to grant Temporary Protected Status in the United States to eligible aliens who are nationals for a foreign state designated by the Attorney General, or who have no nationality and who last habitually resided in that state. The Attorney General may designate a state, or a part thereof, upon finding that the state is experiencing ongoing armed conflict, environmental disaster, or certain other extraordinary and temporary conditions that prevent nationals or residents of the country from returning in safety.

Effective on March 27, 1991, the Attorney General designated Liberia for Temporary Protected Status for a period of 12 months, 56 FR 12746. The Attorney General extended the designation of Liberia under the Temporary Protected Status program for additional 12-month periods until March 28, 1995, 59 FR 9997.

This notice extends the designation of Liberia under the Temporary Protected Status program for an additional 12 months, in accordance with sections 244A(b)(3) (A) and (C) of the Act. This notice also describes the procedures with which eligible aliens who are nationals of Liberia, or who have no nationality and who last habitually resided in Liberia, must comply in applying for continuation of Temporary Protected Status

In addition to timely re-registrations and late re-registrations authorized by this notice's extension of Liberia's Temporary Protected Status designation, late initial registrations are possible for some Liberians under 8 CFR 240.2(f)(2). Such late initial registrants must have been ''continuously physically present'' in the United States since March 27, 1991, and must have had a valid immigrant or non-immigrant status during the original registration period. For each Application for Temporary Protected Status, Form I–821, filed for late initial registration, a fee of fifty dollars ($50) is charged. An Application for Employment Authorization, Form I–765, must be filed together with Form I–821 in all cases. However, the fee prescribed in 8 CFR 103.7(b)(1) for Form I–765, which is currently seventy dollars ($70), is only charged if the alien requests employment authorization.

The filing fee is required when Form I–765 is filed as part of either a re-registration or as part of a late initial registration for Temporary Protected Status. This filing fee must accompany Form I–765 unless a properly documented fee waiver requests is submitted to the Immigration and Naturalization Service or the applicant does not request employment authorization.

**Notice of Extension of Designation of Liberia Under the Temporary Protected Status Program**

By the authority vested in me as Attorney General under section 244A of the Immigration and Nationality Act, as amended, (8 U.S.C. 1254a, and pursuant to sections 244A(b)(3) (A) and (C) of the Act, I have had consultations with the appropriate agencies of the Government concerning (a) the conditions in Liberia; and (b) whether permitting nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, to remain temporarily in the United States is contrary to the national interest of the United States. As a result, I determine that the conditions for the original designation of Temporary Protected Status for Liberia continue to be met. Accordingly, it is ordered as follows:

(1) The designation of Liberia under section 244A(b) of the Act is extended for an additional 12-month period from March 29, 1995, to March 28, 1996.

(2) I estimate that there are approximately 4,000 nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, who have been granted Temporary Protected Status and who are eligible for re-registration.

(3) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who received a grant of Temporary Protected Status during the initial period of designation from March 27, 1991, to March 27, 1992, must comply with the re-registration requirements contained in 8 CFR 240.17, which are described in pertinent part in paragraphs (4) and (5) of this notice.

(4) A national of Liberia, or an alien having no nationality who last habitually resided in Liberia, who previously has been granted Temporary Protected Status, must re-register by filing a new Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on March 29, 1995, and ending on April 27, 1995, in order to be eligible for Temporary Protected Status during the period from March 29, 1995, until March 28, 1996. Late re-registration applications will be allowed for ''good cause'' pursuant to 8 CFR 240.17(c).

(5) There is no fee for the Form I–821 filed as part of the re-registration application. The fee prescribed in 8 CFR 103.7(b)(1) will be charged for the Form I–765, filed by an alien requesting employment authorization pursuant to the provisions of paragraph (4) of this notice. An alien who does not request employment authorization must file Form I–821 together with Form I–765 for information purposes, but in such cases both Form I–821 and Form I–765 may be submitted without fee.

(6) Pursuant to section 244A(b)(3)(A) and (C) of the Act, the Attorney General will review, at least 60 days before March 28, 1996, the designation of Liberia under the Temporary Protected Status program to determine whether the conditions for designation continue to be met. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

(7) Information concerning the Temporary Protected Status program for nationals of Liberia, and aliens having no nationality who last habitually resided in Liberia, will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 23, 1995.

**Janet Reno,**

*Attorney General.*

[FR Doc. 95–7678 Filed 3–28–95; 8:45 am]

**BILLING CODE 4410–01–M**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

### 1. Topper Coal Company

[Docket No. M–95–21–C]

Topper Coal Company, Inc., 266 Rocky Road, Pikeville, Kentucky 41501 has filed a petition to modify the application of 30 CFR 75.1710–1 (canopies or cabs; self-propelled electric face equipment; installation

requirements) to its No. 10 Mine (I.D. No. 15–17516) located in Pike County, Kentucky. The petitioner proposes to use specific electric face equipment without canopies which would include one 16RB Joy Cutting Machine; two 21 SC Joy Shuttle Cars; two CX–2 S & S Scoops; one Fletcher Roof Bolter; and one Long Airdox Roof Bolter. The petitioner states that the use of canopies would limit the visibility of the equipment operator, and could be a contributing factor in any accidents which may arise.

**2. Helvetia Coal Company**

[Docket No. M–95–22–C]

Helvatia Coal Company, Box 729, Indiana, Pennsylvania 15701 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Marshall Run Mine (I.D. No. 36–08435) located in Indiana County, Pennsylvania. The petitioner proposes to use two portable fire extinguishers, or one portable fire extinguisher with twice the required capacity at each temporary electrical installation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**3. U.S. Steel Mining Company, Inc.**

[Docket No. M–95–23–C]

U.S. Steel Mining Company, Inc., 600 Grant Street, Room 1580, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75. 1101–1(b) (deluge-type water spray systems) to its Gary No. 50 Mine (I.D. No. 46–01816) located in Wyoming County, Pennsylvania. The petitioner proposes to continue its weekly inspections and functional testing of the complete deluge-type water spray system and to remove blow-off dust covers from the nozzles. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**4. Green Coal Company, Inc.**

[Docket No. M–95–24–C]

Green Coal Company, Inc., P.O. Box 908, Owensboro, Kentucky 42302 has filed a petition to modify the application of 30 CFR 77.1605(d) (loading and haulage equipment; installations) to its K–9 Panther Mine (I.D. No. 15–01982) located in Daviess County, Kentucky and its Henderson County Mine No. 1 (I.D. No. 15–16454) located in Henderson County, Kentucky. Instead of using tail lights on mobile equipment, the petitioner proposes to build a metal rack across the complete width of the rear of the mobile equipment; to paint the rack with fluorescent paint, strip with fluorescent tape, and add reflectors; and to have the rear end of the equipment so that it can be seen on the longest section of any part of the mine property haulage roads. The petitioner asserts that the proposed alternative method would not result in a diminution of safety to the miners.

**5. Southern Utah Fuel Company**

[Docket No. M–95–25–C]

Southern Utah Fuel Company, 397 South 800 West, Salina, Utah 84654 has filed a petition to modify the application of 30 CFR 75.380(d)(3) and (4) (escapeways; bituminous and lignite mines) to its SUFCo Mine (I.D. No. 42–00089) located in Sevier County, Utah. As an alternate escapeway from the 2 East workings to the surface, the petitioner proposes to use the main return to #3 crosscut where the escapeway will then enter the #1 beltline entry. At this point the escapeway would cross over the #1 belt (height 4 feet) to the walkway side of the belt and then proceed along this side of the belt to the surface at a distance of approximately 450 feet. The petitioner states that because of conventional supports and a barring wall for the tunnel liner in the belt opening, the escapeway width is less that 6 feet; that the narrowest point in this escapeway is the last 17 feet of the drift opening where the width between the roof supports is 2 feet; that because of the cement barring wall and the belt structure, this width cannot be increased; and that an airlock with 3 feet by 7 feet doors is installed inby the drift opening with one side of the airlock 85 feet inby the opening and the other side 140 feet inby. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**6. McElroy Coal Company**

[Docket No. M–95–26–C]

McElroy Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**7. Monterey Coal Company**

[Docket No. M–95–27–C]

Monterey Coal Company, P.O. Box 94, Albers, Illinois 62215 has filed a petition to modify the application of 30 CFR 75.1100–2(i)(1) (quantity and location of firefighting equipment) to its No. 2 Mine (I.D. No. 11–02371) located in Clinton County, Illinois. Instead of using the emergency materials required in the mandatory standard, the petitioner proposes to use the following materials: 112 Kennedy Metal Stopping Panels with associated head sills and twist clamps, 24 Kennedy Stopping Rib Angles, 2 rolls of tape, 2 twist tools, 2 rolls of brattice cloth, 2 stopping jacks, 2 picks, 2 shovels, 6 buckets of Celtite 10–12 Airtite (or equivalent material for stoppings), and 5 tons of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**8. Sky High Coal Company**

[Docket No. M–95–28–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use a gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use hoisting rope with a safety factor at least 3 times greater than required and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connection device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**9. U.S. Steel Mining Co., Inc.**

[Docket No. M–95–29–C]

U.S. Steel Mining Co., Inc., 67 Seal Road, Eighty Four, Pennsylvania 15330 has filed a petition to modify the application of 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Maple Creek Mine (I.D. No. 36–00970) located in Washington County,

Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall mining equipment. The Petitioner states that all electrical personnel would receive training before the alternate method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**10. Sky High Coal Company**

[Docket No. M–95–30–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.335 (construction of seals) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit alternative methods of seal construction using wooden materials of moderate size and weight due to the difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings; to accept a design criterion in the 10 psi range; and to permit the water trap to be installed in the gangway seal and sampling tube in the monkey seal for seals installed in pairs. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**11. Sky High Coal Company**

[Docket No. M–95–31–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.340 (underground electrical installations) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. As an alternative to removing the batteries and transporting them in the gunboat to the surface for charging, the petitioner proposes to charge batteries on the mine's locomotive when all miners are out of the mine and to have the intake air which is used to ventilate the charging station continue through its normal route to the last open crosscut and into the monkey airway (return). The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**12. Sky High Coal Company**

[Docket No. M–95–32–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.360 (preshift examination) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to examine each seal for physical damage from the slope gunboat during the preshift examination after an air quantity reading is taken in by the intake portal and to test for the quantity and quality of air at the intake air split locations off the slope in the gangway portion of the working section. The petitioner proposes to physically examine the entire length of the slope once a month. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**13. Sky High Coal Company**

[Docket No. M–95–33–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1100–2(a) (quantity and location of firefighting equipment) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**14. Sky High Coal Company**

[Docket No. M–95–34–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1200(d) & (i) (mine map) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope and to limit the mapping of mine workings above and below to those present within 100 feet of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**15. Sky High Coal Company**

[Docket No. M–95–35–C]

Sky High Coal Company, R.D. #4, P.O. Box 340M, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its LV No. 3 Mine (I.D. No. 36–08405) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**16. Consolidation Coal Company**

[Docket No. M–95–36–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. The petitioner proposes to increase the maximum length of its trailing cables to 800 feet to supply three-phase, 480-volt power to loading machines, shuttle cars, roof bolters, and section ventilation fans during development of longwall panels. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**17. Cyprus Emerald Resources Corporation**

[Docket No. M–95–37–C]

Cyprus Emerald Resources Corporation, 600 Grant Street, Pittsburgh, Pennsylvania 15219–2887 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Emerald Mine (I.D. No. 36–05466) located in Greene County, Pennsylvania. The petitioner proposes to use high-voltage (4,160 volts) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**18. Twentymile Coal Company**

[Docket No. M–95–38–C]

Twentymile Coal Company, 600 Grant Street, Pittsburgh, Pennsylvania 15219–2887 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Foidel Creek Mine (I.D. No. 05–03836) located in Routt County, Colorado. The petitioner proposes to use

high-voltage (4,160 volts) cables to power longwall mining equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

**Request for Comments**

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 28, 1995. Copies of these petitions are available for inspection at that address.

Dated: March 22, 1995.

**Patricia W. Silvey,**

*Director, Office of Standards, Regulations and Variances.*

[FR Doc. 95–7647 Filed 3–28–95; 8:45 am]

BILLING CODE 4510–43–P

## Occupational Safety and Health Administration

**[Docket No. NRTL–3–93]**

## Factory Mutual Research Corporation

**AGENCY:** Occupational Safety and Health Administration Department of Labor.

**ACTION:** Notice of Application for Renewal of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

**SUMMARY:** This notice announces the application of the Factory Mutual Research Corporation for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** The last date for interested parties to submit comments is May 30, 1995.

**ADDRESSES:** Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington , DC. 20210.

**FOR FURTHER INFORMATION CONTACT:** Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210.

**Notice of Application**

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Factory Mutual Research Corporation (FMRC) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for renewal of its recognition of the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

1151 Boston-Providence Turnpike, Norwood, Massachusetts 02062

743 Reynolds Road, West Gloucester, Rhode Island 02814

**Background**

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Factory Mutual Research Corporation (FMRC) and Underwriters Laboratories Incorporated (UL). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1907 stated, in part, that Factory Mutual Research Corporation was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period FMRC was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. FMRC has applied for renewal of its recognition as an NRTL within the specified time frame (application dated October 8, 1992) and retains temporary recognition pending OSHA's final decision in this renewal process.

**Application**

According to the applicant Factory Mutual began testing products in 1886; the first published listings of approved fire hose appeared in 1907. As of October 1992, FMRC approved products and services for approximately 1900 manufacturers and service providers in the United States and 32 foreign countries.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for renewal of its recognition to certify products in the area of testing which it has specified.

Factory Mutual Research Corporation states that its application demonstrates that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, quality control and calibration programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards. In summary, it claims that it has the experience, expertise, personnel, organization, equipment, and facilities suitable for renewal of its accreditation as an OSHA Nationally Recognized Testing Laboratory.

In support of its application, FMRC has attached various exhibits [see Exhibits 2A(1), 2A(2), 2A(3), and 2A(4)]. According to the applicant, it demonstrates its capability to perform testing and examining of equipment and materials for workplace safety purposes to determine conformance with appropriate standards [see Ex. 2A(1)]; has the proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs [see Ex. 2A(2)]; and has also the capability to perform experimental testing and examining of equipment and materials for workplace safety purposes to determine the conformance with appropriate test standards or performance in a specified manner.

FMRC further asserts that it provides the following controls or services: A registered certification mark [see Ex. 2A(3)]; product evaluation of samples submitted by manufacturers to assure conformance with the test standards; and a facilities and procedures quality audit program to monitor production and use of the FMRC Approval Mark, supplemented with periodic inspections of user premises for monitoring product performance and for identifying the listed or labeled equipment or materials [see Exs. 2A(2)] and 2A(3)].

The applicant also states that it is a non-profit corporation and, accordingly, is not owned, operated or controlled by any company manufacturing, supplying or distributing any portion of the materials and products examined and tested. Further, FMRC claims not to have any financial interest in any company manufacturing, supplying, or distributing materials or products examined [see Ex. 2A(3)].

If clients, FMRC personnel, users, or other sources, file a complaint or disagrees with a decision relating to the standard, to engineering, use, or to inspection, they can present and discuss their views with the involved Engineer(s) and Section Manager in an effort to resolve any disagreement. If the matter cannot be satisfactorily resolved at that level, they are referred to the Department Manager, then to the Division Manager and finally if the complaint is still unresolved it is referred to the Chief Operating Officer

for the final decision. Equipment rental is infrequent and used only for a special one-time test or when a similar piece of equipment is in repair. The equipment is leased from reputable dealers and operation manuals and calibration certification are required to be supplied.

Finally, Factory Mutual Research Corporation states that it provides creditable reports and findings which are objective and without bias, as well as a fair and reasonable system of handling complaints [see Ex. 2A(2)].

FMRC's application contained 4 enclosures, which they identified as Exhibits 1, 2, 3 and 4. For OSHA's purposes, these documents are listed as Exhibits 2A(1), 2A(2), 2A(3), and 2A(4), respectively. Exhibit 2A(1) lists the test standards for which the applicant desired accreditation, and includes copies of those prepared and published by FMRC. Exhibit 2A(2) consists of FMRC's Operations and Quality Assurance Manual (OQAM) dealing with various facets of the Approvals Division, such as background and history; a demonstration of reporting results; the FMRC organizational chart; the Electrical Department; handling of complaints; laboratory operations; personnel, including position descriptions; descriptions of the facilities; details of procedures with test samples; test procedures; record keeping and data collection; documentation and document control; reports; test equipment including the calibration program; the facilities and procedures audit; product re-examination program; approval standards including mechanics of development; status of approval or listing; guides and listing procedures; follow-up testing; the Quality Assurance program; and a listing of blank forms used in the Approvals Division. Exhibit 2A(3) contains a statement of independence; a listing of FMRC's certification marks; a brochure concerning its approval services; a sample of the general procedure format; and a listing of test equipment. Finally, the last enclosure, Exhibit 2A(4), encompasses the FMRC Approval Guide, including two supplements.

The test procedure method is identified in the revised 5–15–92 version of the General Test Procedure Format. This format identifies specific paragraphs for specific information. General headings include the Purpose and Scope, Test Criteria, Samples Required, Test Facilities and Equipment, Test Setup, Operations, Test Results, and Safety Precautions. The test procedures listing is being updated to reflect the latest procedures.

**Facilities**

Factory Mutual Research Corporation (FMRC) headquarters in Norwood, Massachusetts occupies a 40 acre site with more than a dozen buildings totaling some 235,550 square feet. Approximately 50 percent of the floor space is allocated for product testing. The Norwood complex is also headquarters for Factory Mutual Engineering Corp. (FMEC) and Factory Mutual Engineering Association (FMEA). Under Factory Mutual Research Corporation are the Standards Division, Approvals Division, Research Division, Loss Operational Analysis Department, and the Administration Department. Many of the administrative and operational support activities for FMRC, such as legal, accounting, and personnel, are provided by FMEC. The Approvals Division of FMRC has responsibility for the Facilities and Procedures Audits (follow-up program for manufacturers); however, in the United States, inspectors are provided by FMEA while overseas they are provided by Factory Mutual International (FMI). The Approvals Division has a technical staff of approximately 75, consisting of 10 managers, 51 engineers, and 15 technicians. FMEA has approximately 960 inspectors and FMI 300.

The West Glocester facility occupies a 1500 acre site. The main building totals some 30,260 square feet. Three large fire test pads and the associated control room occupy most of this space. Additional facilities at West Glocester include a large hydraulics laboratory and a structure to study explosions of combustible dusts and flammable gases or vapors. The West Glocester facility has a staff of approximately 35. However, most of the facility is devoted to the testing of sprinkler and other fire extinguishment system.

**Audit Structure**

A new audit schedule addresses the frequency of audits and includes the West Glocester facilities. The schedule also includes an aggressive approach to resolving identified discrepancies.

The Facilities and Procedures Audits (F&PA) for FMRC Practices and Procedures provide information on how to perform a proper and successful Approvals Division Facilities and Procedures Audit (F&PA). This document provides guidance on the program, scope of the audits, Areas of Investigation of a Manufacturers Quality Assurance Program, and the preparation, planning and conducting of the audit.

The frequency of audits at the manufacturing site are monitored to insure the yearly minimum (at least quarterly for the NRTL program) is maintained and is in accordance with QAM Section 17.4.

**Internal Controls (Quality Assurance)**

The Operations and Quality Assurance Manual documents the procedures for controlling the quality of operations in the Approvals Division. The manual includes a policy statement and methods to evaluate and correct quality system problems and includes the necessary ingredients for an effective Quality Assurance Program.

Portions of the Operations and Quality Assurance Manual describe the general policy requiring outside testing laboratories to meet the applicable quality assurance standards of the Approvals Division. The Manual does not specify which outside NRTL laboratories are acceptable, only that the laboratory must meet the Approvals Division quality assurance requirements.

The Technical Report Format is described in the Operations and Quality Assurance Manual (OQAM), and contains the name and address of the testing location, job identification number, name and address of the client, facilities and procedures audit inspection results, conclusion, signatures and other relevant information.

Another section of the Operations and Quality Assurance Manual addresses the Record Keeping Requirements, to include the retention time for specific types of records.

The Follow-up Program is also discussed in the OQAM. Initial factory inspections for an approval/listing process are normally conducted by the Approvals Division personnel (FMRC). Subsequent follow-ups are commonly conducted by the FMEA District Offices in North America, and by FMI in other locations.

**Programs**

FMRC administers several operational programs, some of which have been in effect for a number of years. Some of these programs have provided the test and evaluation data for products that have been approved and are still being supplied by manufacturers for introduction into the workplaces of the United States.

The following programs have been examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that

NRTLs may engage in under the OSHA/NRTL program. See Exhibit 2C, an addendum to the original ''On-Site Review Report (Survey)'', dated March 10, 1995, (Exhibit 2B), which reviews the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures''.

*Basic Program*

This program is one in which FMRC performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

*Witnessed Test Data Program*

This program is utilized when such as the size, complexity, or uniqueness of a product requires testing at the manufacturer's or other outside laboratory's facilities, or when a manufacturer is entering the Laboratory Qualification Program. The tests are in accordance with the appropriate recognized standard(s) and are witnessed by an FMRC technical representative. The specific information required by the FMRC Operations and Quality Assurance manual to insure equivalency with tests conducted at FMRC is recorded in the Project Data Record (test notebook).

*FMRC Laboratory Qualification Program*

Since 1979, manufacturers of electrical utilization equipment (process control and test and measuring instrumentation for use in ordinary ''non-hazardous'' locations) meeting specific criteria, have been allowed to submit test data to FMRC to be used as a part of the approval process. The data submitted by the manufacturer may be used in lieu of tests conducted by FMRC or, at its discretion, FMRC may conduct comparative tests to insure accurateness of manufacturers' supplied data. This includes a review of the product submitted for approval.

The qualification procedures include on-site assessments and an evaluation for usage of proper standards, client personnel, testing facilities and verification testing. Part of the program includes periodic review visits.

A specific department of the client is qualified to generate the necessary test and evaluation information that a product meets the appropriate standards. Test equipment, calibration program, test personnel, test procedures, design origination and change, and the marking and documentation submittal are specified in the Laboratory Qualification Report. The information and a sample product is sent to FMRC for its review.

The program allows for unannounced on-site visits to the manufacturer's facility to verify compliance with the program. An up-to-date listing is maintained of the manufacturing laboratories that are qualified under this program.

*International Electrotechnical Commission (IEC) CB Scheme*

The IEC–CB Scheme is a certification program for gaining product approval recognition on an international level. Products tested by any National Certification Body (NCB) that participates in the CB Scheme will be accepted for approval without the need for retesting in other member (of the CB Scheme) countries.

Eligibility in the CB Scheme requires that members be recognized by their own governments as an accredited national organization having the authority to issue a listing or place a mark on products that meet specific national standards.

FMRC is accredited by the IEC for testing and evaluating electrical equipment for measurement, control and laboratory use, and information processing equipment including electrical business equipment.

*Interlaboratory Agreements*

FMRC tests products for, and accepts test data from, internationally recognized laboratories which have interlaboratory agreements with FMRC. The laboratory generating the test data conducts these tests in accordance with the nationally recognized standards of the laboratory certifying the product. Regularly scheduled audits are conducted at each laboratory to insure the competence of the laboratory. The audits include a review of personnel, test equipment, test procedures, documentation control, and quality of operation.

FMRC asserts that it may accept components which have been tested at other laboratories after review of the test report and any additional evaluation necessary. The evaluation by the applicant includes an assurance that the other laboratory's performance meets the level that FMRC would provide had it performed the service.

**Standards**

The applicant desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

FMRC 1110—Indicator Posts
FMRC 1221—Backflow Preventers
FMRC 1321—Controllers for Electric Motor Driven Fire Pumps
FMRC 1333—Diesel Engine Fire Pump Drivers
FMRC 1635—Plastic Pipe and Fittings for Automatic Sprinkler Systems
FMRC 3600—Electrical Equipment for Use in Hazardous (Classified) Locations, General Requirements
FMRC 3610—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II and III, Division 1 Hazardous (Classified) Locations
FMRC 3611—Electrical Equipment for Use in Class I, Division 2; Class II, Division 2; and Class III, Division 1 and 2 Hazardous Locations
FMRC 3615— Explosionproof Electrical Equipment, General Requirements
FMRC 3620—Purged and Pressurized Electrical Equipment for Hazardous (Classified) Locations
FMRC 3810—Electrical and Electronic Test, Measuring, and Process Control Equipment
FMRC 6051—Safety Containers and Filling, Supply and Disposal Containers
FMRC 6310—Combustible Gas Detectors
FMRC 7812—Industrial Trucks—LP–Gas
FMRC 7816—Industrial Trucks—LP–Gas Dual Fuel
FMRC 7820—Industrial Trucks—Electric
ANSI Z8.1—Commercial Laundry and Drycleaning Equipment and Operations
ANSI/ISA S12.12—Electrical Equipment for Use in Class I, Division 2, Hazardous (Classified) Locations
ANSI/ISA S12.13.1—Performance Requirements for Combustible Gas Detectors
ANSI/ISA S12.15—Hydrogen Sulfide Detection Instruments
ANSI/ISA S82.01—Electrical and Electronic Test, Measuring Equipment
ANSI/ISA S82.02—Electrical and Electronic Test and Measuring Equipment
ANSI/ISA S82.03—Electrical and Electronic Process Measuring and Control
ANSI/NEMA ICS 2—Industrial Control Devices, Controllers and Assemblies
ANSI/NEMA 250—Enclosures for Electrical Equipment
ANSI/NFPA 11—Low Expansion Foam and Combined Agent Systems
ANSI/NFPA 11A—Medium- and High-Expansion Foam Systems
ANSI/NFPA 12—Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A—Halon 1301 Fire Extinguishing Agent Systems

ANSI/NFPA 13—Installation of Sprinkler Systems
ANSI/NFPA 16—Deluge Foam-Water Sprinkler and Spray Systems
ANSI/NFPA 17—Dry Chemical Extinguishing Systems
ANSI/NFPA 20—Centrifugal Fire Pumps
ANSI/NFPA 72—Installation, Maintenance, and Use of Protective Signaling Systems
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 38—Manually Actuated Signaling Boxes for Use With Fire-Protective Signaling Systems
ANSI/UL 154—Carbon-Dioxide Fire Extinguishers
ANSI/UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 583—Electric-Battery-Powered Industrial Trucks
ANSI/UL 626—2½ Gallon Stored-Pressure, Water-Type Fire Extinguishers
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 711—Fire Extinguishers, Rating and Fire Testing of
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 827—Central-Stations for Watchmen, Fire-Alarm, and Supervisory Services
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1058—Halogen Agent Extinguishing System Units
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1236—Electric Battery Chargers
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment

**Preliminary Finding**

The Factory Mutual Research Corporation addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Operations and Quality Assurance Manual including a description of its documentation, calibration system, appeals procedures, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey teams in the on-site evaluations, [Ex. 2B(1)], were adequately responded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparation of the final survey reports of the Factory Mutual Research Corporation, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 2B).

Following a review of the application file and the on-site survey reports of the FMRC Norwood, Massachusetts and the West Glocester, Rhode Island facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory for the above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Factory Mutual Research Corporation facilities for which accreditation was requested (Norwood, MA and West Glocester, RI) can meet the requirements for renewal of its recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 30, 1995, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Copies of the FMRC application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–93), are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Factory Mutual Research Corporation) satisfies the requirements for renewal of its recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of § 1910.7.

Signed at Washington, DC, this 22nd day of March 1995.

**Joseph A. Dear,**

*Assistant Secretary.*

[FR Doc. 95–7675 Filed 3–28–95; 8:45 am]

BILLING CODE 4510–26–M

**[Docket No. NRTL–4–93]**

## Underwriters Laboratories Incorporated

**AGENCY:** Occupational Safety and Health Administration, Department of Labor.

**ACTION:** Notice of Application for Renewal of Recognition as a Nationally Recognized Testing Laboratory, and Preliminary Finding.

**SUMMARY:** This notice announces the application of the Underwriters Laboratories Incorporated for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

**DATES:** The last date for interested parties to submit comments is May 30, 1995.

**ADDRESSES:** Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, D.C. 20210.

### Notice of Application

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that Underwriters Laboratories Incorporated (UL) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for renewal of its recognition for the following facilities as a Nationally Recognized Testing Laboratory.

The addresses of the laboratories covered by this application are:

333 Pfingsten Road, Northbrook, Illinois 60062
1285 Walt Whitman Road, Melville, Long Island, New York 11747
1655 Scott Boulevard, Santa Clara, California 95050
12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709
2600 N.W. Lake Road, Camas, Washington 98607
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong
UL International Services, Ltd., 3rd Floor, No. 35, Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

### Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Underwriters Laboratories Incorporated (UL) and Factory Mutual Research Corporation (FMRC). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1910.7 stated, in part, that Underwriters Laboratories Incorporated was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period UL was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. UL has applied for renewal of its recognition as an NRTL within the specified time frame (application dated September 30, 1993) and retains temporary recognition pending OSHA's final decision in this renewal process.

### Application

According to the applicant, Underwriters Laboratories Inc., is an independent, not-for-profit product safety certification organization, which was founded in 1894. UL has requested accreditation for its five major domestic certification locations, including its newest facility at Camas, Washington, and two overseas subsidiaries.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for renewal of its recognition to certify products in the areas of testing which it has specified.

Underwriters Laboratories Inc. states that its application demonstrates that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, quality control and calibration programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards.

It also claims that it supplies, to the extent needed for the particular equipment or materials listed, labeled or accepted, the following control or services: Implementation of control procedures for identifying UL Certified equipment or materials; inspection of the run of production of such items at factories; and conducting of field inspections.

UL states, further, that it is completely independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes.

The applicant maintains that it has effective procedures for reports that are objective and without bias; and for handling complaints and disputes under a fair and reasonable system.

In summary, UL claims that it has the experience, expertise, personnel, organization, equipment, and facilities suitable for renewal of its accreditation as an OSHA Nationally Recognized Testing Laboratory.

UL's application (Exhibit 2A) consisted of the following segments which, it states, demonstrate the above claims:

Section 1—Introduction, purpose and format; Section 2—Scope and Application, standards sought for recognition; Section 3—Organizational Data, applicant's background, history, ownership, testing locations and external organizations used for technical support; Section 4—Affiliation, statement of independence; Section 5—Personnel, numbers and job descriptions of and training programs for technical staff, identification and qualifications of key personnel; Section 6—Services Provided, services provided certification marks, reports and records, follow-up inspection program and testing, and various programs involving client participation; Section 7—Testing Experience, testing experience, standards writing activity, and identification of various accreditations; Section 8—Control Programs, quality improvement system including Quality Control Manual, recording and control of data, supervision of samples, access security system, test procedures, lab personnel qualifications and test equipment records, standards, codes and regulations distribution, and uniform requirements interpretations; Section 9—Appeals Procedures/ Procedures and Reports, appeals system, and product field reports; Section 10—Test Equipment, appropriateness and calibration of test equipment; Section 11—Facilities, size and adequacy of each facility; and Section 12—Supplemental Information—representative NRTL program form.

**Facilities**

Underwriters Laboratories Inc. has five main test facilities located in the United States, and two subsidiary laboratories in Asia. They are located in Northbrook, IL; Melville, NY; Santa Clara, CA; Research Triangle Park, NC; Camas, WA; Taipei, Taiwan; and, Hong Kong.

The Northbrook, Illinois facility contains the corporate headquarters and is the center for developing and distributing documents for the organization. It consists of three separate testing complexes, the largest of which contains the headquarters offices and the majority of the testing laboratories. Contained within this complex are the Standards Division, Follow-Up Services Division, Legal, Engineering Services Division, Administrative Division, Accounting, and External Affairs Division. Roughly 36 percent of the approximately 1700 employees comprise the technical staff at Northbrook.

All hazardous location testing is conducted at Northbrook. This facility, as do each of the others, performs testing and follow-up services for certain of UL's client base. Normally, each facility's clients are located within their own geographical area.

Other specifics of the Northbrook facility are contained in the Northbrook Report, Exhibit 2B, under headings pertaining to facilities, test equipment, calibration program, test and evaluation procedures, test reports, records, quality assurance, follow-up listing program, personnel, recognized third party testing, manufacturing site data, outside rental equipment, and third party contract services. In most instances, the procedures at the other four U.S. locations track those found at Northbrook, as do many of the procedures at both the Taiwan and Hong Kong facilities.

The Melville, New York facility houses the East and West International Inspection Services department that manages the follow-up inspections for products manufactured overseas. Each US based UL facility has an International Inspection Coordinator who functions on behalf of both the East and West International Inspection Services (IIS).

The IIS is divided into two sections for administrative purposes—Eastern and Western. The Eastern section includes inspection centers in Asia, Australasia, Indian subcontinent and Canada. In addition, the Eastern Section coordinates the follow-up and engineering services for China. The Western section includes Mexico, Central and South America, the Caribbean, Africa, Europe, and the Near and Middle East.

UL maintains its own overseas inspection centers in many countries and also contracts out inspections to other inspection services. Many of these contracted inspection services have been in place for over 30 years. The services are performed by private inspection companies, by government inspection agencies, or by a quasi-governmental agency similar to our Postal Service.

The facilities located at Research Triangle Park, North Carolina, Santa Clara, California and Camas, Washington utilize procedures essentially similar to those as Northbrook and normally perform testing and follow-up services for clients located within their geographical areas.

The technical staff at Camas, Washington, the newest facility, is comprised of some 22 employees. The laboratory conducts electrical/electronic testing. The equipment not available is purchased or loaned to Camas from other UL offices if required for short-term periods.

The Hong Kong and Taiwan facilities conduct testing and perform evaluations for clients located in the Far East. However, a client may choose to have the testing and evaluation done at one of the U.S. facilities.

The Hong Kong facility provides testing support for the UL programs for clients in Hong Kong, China, and Australasia. This office has been open since 1988.

In the Hong Kong area the testing laboratory and inspection services are housed in the same building. UL staff of the Inspection and Administration Services monitors the China National Import & Export Commodities Inspection Corporation (CCIC) for inspections carried out in China, which are controlled out of the UL Melville office. The staff also performs the inspections in Hong Kong.

The UL laboratory in Taiwan has been in existence for over 20 years, and performs services for clients within its geographical area. The Follow-Up Services Office in Taiwan (the Administration and Inspection Services Office) has been in existence for about 10 years.

The latest test standards are supplied from the Northbrook Office for both locations.

Neither facility rents equipments or subcontracts testing. Products that cannot be tested because of the lack of equipment are generally sent to a UL laboratory facility in the United States.

Senior management personnel are rotated from stateside appointments to positions in both the Hong Kong and the Taiwan offices.

All official UL records are in English. Some files contain translations and notes that are in other languages. Agreements between clients and the laboratory are in English. The required files for the record system are the same as those required for products that are processed through one of the UL laboratories in the United States.

Specifics of the on-site investigations for all of the facilities may be found in the On-Site Review Reports (Surveys), Exhibits 2B and 2C. Interested persons are invited to review these reports.

UL also maintains offices in Atlanta, Baltimore, Boston, Dallas, Minneapolis, Portland, Norman (OK), and Seattle. Staff at these locations provide engineering services to clients in their geographical area, and report directly to one of the five domestic offices where their work is reviewed.

**Internal Controls (Quality Assurance)**

The UL Quality Assurance (QA) Program is documented in a number of manuals that address various functions. There is not a single overall document called a QA Manual which alone defines the corporate QA policy. The Engineering Department Manual (EDM) has many of the elements normally associated with a QA Manual and provides general corporate direction. Some of the elements that are addressed are: work definitions, costing guidelines, agreement forms, files, test waiving, follow-up services policy, client-agent relations, products in foreign countries, and confidentiality. This document is presently under revision. A program for continuous quality improvement is in place. The Q-Plus program utilizes an employee team concept for continuous quality improvement.

The Laboratory Operations Manual (LOM) outlines the laboratory quality program and establishes minimum guidelines for such functions as development of forms, data requirements, equipment maintenance and calibration, report reviewing, auditing, identification of applicable tests, and corrective action procedures. The LOM also establishes policies for test standards, test equipment, qualified personnel, laboratory procedures and documentation, and self-monitoring and self-improvement.

The Follow-Up Services (FUS) Manual provides guidance for field inspectors who monitor product manufacturing under the applicant's FUS Agreement. This Manual provides

the day-to-day operational guidance for inspection personnel. Other major departments utilize their own manuals for providing day-to-day direction.

For the purpose of consistent application of requirements in the standards, a program is in place which provides the controls and flexibility for developing and interpreting standards. Each location has a designated engineer who is responsible for the interpretations for a particular standard. One engineer is the primary designated engineer, and is responsible for the coordination of all other designated engineers as well as insuring the consistency of all interpretations.

Relative to the NRTL program, the Engineering Department and Laboratory Operations manuals are the main documents in the UL organization. The LOM is considered as corporate policy and its purpose is to provide a framework for procedures and controls to assure that the requisite degrees of accuracy are achieved.

**Programs**

UL operates a variety of services and organizational programs. Some of the programs have been in effect for decades, and have provided the test and evaluation data for products that have been approved and are still being supplied by manufacturers for introduction into the workplaces of the United States.

The following programs have been examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, pertaining to the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program. See Exhibits 2C and 2C(1), concerning the survey and acceptance of the Camas, Washington facility, dated March 10, 1995, which also review and recommend inclusion of the following programs on the basis of their conformance to the programs described in 60 FR 12980, March 9, 1995, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'' (Exhibit 8).

**Basic Program**

This program is one in which UL performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

*Witnessed Test Data Program*

This program involves the use of UL Technical Personnel at a manufacturer's test site to witness testing for products that will be listed by UL. The manufacturer's facilities used for this purpose are qualified by the UL engineering department. The follow-up program is the normal one for that product and manufacturer (Ex. 2B, Santa Clara Report, Section 11).

*Client Agent Program (CAP)*

This program qualifies intermediaries that interface between UL and the client. This usually involves overseas clients utilizing US based agents. This program qualifies the intermediaries in administrative areas, technical areas, or in a combination of both. An intermediary that is qualified in the technical areas can perform testing on behalf of the client. The Client Agent Program does not prohibit an agent from providing technical advice on modifications to the product in order to meet the requirements of the standard. However, the CAP program is not intended to qualify agents in providing technical advice to clients. Administratively qualified intermediaries provide documentation, drawing, and translation support for the client.

*China National Import and Export Commodities Inspection Corporation (CCIC) Inspection Program*

The CCIC is a Chinese government organization that is retained by the UL Inspection Services to perform follow-up inspections in China. This inspection program is under the oversight control of UL personnel through the Hong Kong facility, and the International Inspection Services Department (Ex. 2b, Melville Report, Sections 8 & 13).

*National Certification Body (NCB)*

Underwriters Laboratories is one of five NRTLs that are participants in the International Electrotechnical Commission (IEC) Certification Body (CB) Scheme. This is an international program that allows laboratories accredited as Certified Bodies to exchange test reports with each other during the process of certifying products. The IEC has allowed NRTLs to participate in this Scheme because they have been accredited by OSHA. The IEC requires governmental oversight for participants.

*Client Test Data Program (CTDP)*

This program is the most extensively used and the basic program that involves client participation. This program involves the systematic qualification of the client by reviewing their laboratory, environmental controls, testing instrumentation, electrical power system, the client personnel involved in the program, the access to the latest UL standards, mutual testing, confidence building and the correlation of the testing packages with UL test results. Specific test information is required to be submitted and UL performs verification testing at intervals not known by the participant. There is no change in surveillance conducted by UL's follow-up services. There is an additional review conducted by UL engineering personnel that is conducted at least yearly to assess the participant's continued capability to be in the program. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

*Compliance Management and Product Assurance Program (COMPASS)*

This program is a voluntary process that allows qualified manufacturers that have successfully utilized the CTDP Program to perform limited self evaluation and testing within specified categories.

For minor changes to already listed products, the client reviews the changes and performs any needed tests, and continues to use the listing mark. The client submits the documentation to UL for review. If the product does not comply, the manufacturer is required to remove the UL marks. This procedure for handling minor changes was designed to handle the real life situations, such as a purchasing department electing to purchase an alternate switch. Rather than wait for a variation notice to be issued by UL's follow-up services representative, this path serves to keep the client and UL in close contact between inspections. Minor changes are defined as modifications which involve the use of an alternate or optional component in a previously accepted product. An example is the substitution of a comparable switch from a different manufacturer, or the change of horsepower of a motor.

For major changes or new products the client must submit a sample and all documentation to UL for review. Depending upon the situation, UL may determine that the nature of the change and experience with the client and testing associated are such that additional verification testing is not necessary. In this situation, UL will authorize the use of the listing mark.

UL may determine that immediate verification testing is not needed. In this situation, the authorization to use the Listing mark is given but verification testing is conducted later. In all cases, verification testing is conducted for new products. In all situations where verification testing is needed, if

correlation does not exist, the listing marks must be removed.

The follow-up program and engineering department audits are the same as with CTDP, and an additional audit of the client's quality system is performed. Both CTDP and COMPASS involve UL making a determination of the compliance of the product with the standard at some point in the process. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

*Total Certification Program (TCP)*

This program parallels the manufacturer and UL in a combined evaluation of products. This is in contrast to the sequential process that is used under the COMPASS program where the manufacturer tests and evaluates and then submits the information to UL.

The program involves the testing and evaluation of a product by the manufacturer, and also the manufacturer's determination of compliance with a standard. The manufacturer is subject to continuous involvement with UL throughout the design and production of the product. UL conducts regular audits throughout the process including verification testing. Similar to the COMPASS program, the manufacturer must qualify for this program by demonstrating the ability to test and evaluate a product and it must have a viable quality assurance program, in addition to having the personnel and equipment to provide creditable results. In all cases, it is UL who authorizes the use of the listing mark. The manufacturer is audited four times a year by the UL engineering staff, and twice a year the manufacturer's quality assurance program is reviewed. Follow-up inspectors continue to conduct follow-ups.

**Audit Structure**

Corporate level audits are performed yearly while site or operational audits are performed semi-annually. Many of the documented audit programs are relatively new and a long term historical record does not exist. UL has an audit schedule listing for 1993 and 1994 that has been followed, and addresses various operating units of the organization.

**Standards**

Underwriters Laboratories Inc. desires recognition for testing and certification of products when tested for compliance with the following test standards, which are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI Z21.1b—Household Cooking Gas Appliances
ANSI Z21.5.1—Gas Clothes Dryers—Type 1
ANSI Z21.5.2—Gas Clothes Dryers—Type 2
ANSI Z21.10.1—Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2—Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3—Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1—Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2—Gas-Fired Room Heaters—Univented Room Heaters
ANSI Z21.12—Listing Requirements for Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14—Approval Requirements for Industrial Gas Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.16—Gas Unit Heaters
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.19—Refrigerators Using Gas Fuel
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.22—Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.29—Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.37—Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41—Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42—Gas-Fired Illuminating Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.45—Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47—Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53—Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54—Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55—Gas-Fired Sauna Heaters
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.58—Outdoor Cooking Gas Appliances
ANSI Z21.61—Gas-Fired Toilets
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z21.66—Automatic Vent Damper Devices for Use With Gas-Fired Appliances
ANSI Z21.69—Connectors for Movable Gas Appliances
ANSI Z21.74—Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76—Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
ANSI Z83.3—Gas Utilization Equipment in Large Boilers
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6—Gas-Fired Infrared Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI Z83.17—Direct Gas Fired Door Heaters
ANSI Z83.18—Direct Gas Fired Industrial Air Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring
ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 9—Fire Tests of Window Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
UL 13—Power-Limited Circuit Cables
ANSI/UL 14B—Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors

ANSI/UL 14C—Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 30—Metal Safety Cans
ANSI/UL 33—Heat Responsive Links for Fire-Protection Service
UL 38—Manually Actuated Signalling Boxes for Use With Fire Protective Signalling Systems
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Enclosures for Electrical Equipment
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 58—Steel Underground Tanks for Flammable and Combustible Liquids
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 80—Steel Inside Tanks for Oil Burner Fuel
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 92—Fire Extinguisher and Booster Hose
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 96—Lightning Protection Components
UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices and Contacts
UL 109—Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use
ANSI/UL 122—Photographic Equipment
ANSI/UL 123—Oxy-Fuel Gas Torches
UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
ANSI/UL 130—Electric Heating Pads
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141—Garment Finishing Appliances
ANSI/UL 142—Steel Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
UL 147A—Nonrefillable (Disposable) Type Fuel Gas Cylinder Assemblies
UL 147B—Nonrefillable (Disposable) Type Metal Container Assemblies for Butane
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
UL 155—Tests for Fire Resistance of Vault and File Room Doors
UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 180—Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 181—Factory-Made Air Ducts and Air Connectors
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 193—Alarm Valves for Fire-Protection Service
UL 194—Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 199—Automatic Sprinklers for Fire-Protection Service
ANSI/UL 203—Pipe Hanger Equipment for Fire-Protection Service
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
UL 213—Rubber Gasketed Fittings for Fire-Protection Service
ANSI/UL 217—Single and Multiple Station Smoke Detectors
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 252—Compressed Gas Regulators
UL 260—Dry Pipe and Deluge Valves for Fire-Protection Service
UL 262—Gate Valves for Fire-Protection Service
ANSI/UL 268—Smoke Detectors for Fire Protective Signalling Systems
ANSI/UL 268A—Smoke Detectors for Duct Application
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
UL 296A—Waste Oil-Burning Air-Heating Appliances
UL 297—Portable Medium-Pressure Acetylene Generators
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
UL 305—Panic Hardware
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 312—Check Valves for Fire-Protection Service
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 330—Gasoline Hose
ANSI/UL 331—Strainers for Flammable Fluids and Anhydrous Ammonia
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 385—Play Pipes for Water Supply Testing in Fire Protection Service
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 399—Drinking-Water Coolers
UL 404—Gauges, Indicating Pressure, for Compressed Gas Service

UL 407—Manifolds for Compressed Gases
UL 408—Stationary Medium Pressure Acetylene Generators
UL 409—Stationary Low-Pressure Acetylene Generators
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for FIre Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners
ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP–Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 521—Heat Detectors for Fire Protective Signaling Systems
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 555—Fire Dampers
UL 555S—Leakage Rated Dampers for Use in Smoke Control Systems
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
UL 565—Liquid Level Gauges and Indicators for Anhydrous Ammonia and LP-Gas
ANSI/UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 569—Pigtails and Flexible Hoses
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 611—Central-Station Burglar-Alarm Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 626—2½ Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use With Burglar-Alarm Systems
ANSI/UL 636—Holdup Alarm Units and Systems
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 644-Container Assemblies for LP-Gas
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 681—Installation and Classification of Mercantile and Bank Burglar-Alarm Systems
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Idustrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 756—Coin and Currency Changers and Actuators

UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Group C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central Stations for Watchman, Fire-Alarm, and Supervisory Services
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
UL 860—Pipe Unions for Flammable and Combustible Fluids and Fire Protection Service
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 887—Delayed-Action Timelocks
ANSI/UL 891—Dead-Front Electrical Switchboards
ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetric Refrigerant Motor-Compressors
ANSI/UL 987—Statutory and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptable-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Therman Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1034—Burglary Resistant Electric Locking Mechanisms
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
ANSI/UL 1062—Unit Substations
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC Power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
ANSI/UL 1091—Butterfly Valves for Fire Protection Service

ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1314—Special-Purpose Containers
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
ANSI/UL 1322—Fabricated Scaffold Planks and Stages
UL 1323—Scaffold Hoists
ANSI/UL 1332—Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1446—Systems of Insulating Materials—General
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
ANSI/UL 1484—Residential Gas Detectors
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492—Audio and Video Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubes, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I, and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Applicances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
ANSI/UL 1703—Flat Plate Photo Voltaic Modules and Panels
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
ANSI/UL 1726—Automatic Drain Valves for Standpipe Systems
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
ANSI/UL 1739—Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1767—Early-Suppression Fast-Response Sprinklers

ANSI/UL 1769—Cylinder Valves
ANSI/UL 1773—Termination Boxes
UL 1776—High-Pressure Cleaning Machines
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

**Preliminary Finding**

Underwriters Laboratories Incorporated addressed all of the criteria which had to be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; a summary of its listing, labeling, and follow-up services, including examples; a statement of its independence as a testing laboratory; and a discussion of its control programs, including the Q-Plus Program and a copy of its Laboratory Operations Manual; and descriptions of its calibration system, appeals procedure, recordkeeping and operational procedures.

Nine major areas were examined in depth in carrying out the laboratory surveys: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted by the survey teams in the on-site evaluations [Ex. 2B(1)] were adequately resonded to by the applicant prior to the preparation of the survey report and are included as a integral part of the report.

With the preparation of the final survey reports of Underwriters Laboratories Incorporated, the survey team was satisfied that the testing facilities appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey); see Ex. 2B.

Following a review of the application file, and the on-site survey reports of the Northbrook, Illinois; Melville, New York; Research Triangle Park, North Carolina; Santa Clara, California; Camas, Washington; and the subsidiary Taipei, Taiwan, and Hong Kong facilities, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory for the above noted facilities and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendations of the staff, the Assistant Secretary has made a preliminary finding that the Underwriters Laboratories Incorporated facilities for which accreditation was requested can meet the requirements for recognition (Camas, WA), or renewal of recognition (all others noted above), as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for renewal of its recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than May 30, 1995, and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Copies of the UL application, the laboratory survey reports, and all submitted comments, as received, (Docket No. NRTL–4–93 , are available for inspection and duplication at the Docket Office, Room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant (Underwriters Laboratories Incorporated) satisfies the requirements for renewal of its recognition as an NRTL will be made on the basis of the entire record including the public submissions an any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of Section 1910.7.

Signed at Washington, DC this 22nd day of March 1995.

**Joseph A. Dear,**

*Assistant Secretary.*

[FR Doc. 95–7676 Filed 3–28–95; 8:45 am]

BILLING CODE 4510–26–M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Meetings of Humanities Panel

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Notice of meetings.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

**FOR FURTHER INFORMATION CONTACT:** David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

**SUPPLEMENTARY INFORMATION:** The proposed meetings 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 discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. Date: April 20–21, 1995.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications submitted for Humanities Projects in Media program for the March 10, 1995 deadline, submitted to the

Division of Public Programs, for projects after September 1, 1995.

2. Date: April 27–28, 1995.

Time: 8:30 a.m. to 5 p.m.

Room: 415.

Program: This meeting will review applications submitted for Humanities Projects in Media program for the March 10, 1995 deadline, submitted to the Division of Public Programs, for projects beginning after September 1, 1995.

**David C. Fisher,**

*Advisory Committee Management Officer.*

[FR Doc. 95–7641 Filed 3–28–95; 8:45 am]

**BILLING CODE 7536–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. STN 50–528]**

### Arizona Public Service Company, et al., Palo Verde Nuclear Generating Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), Type A Tests, to the Arizona Public Service Company, et al. (APS or the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit No. 1, located in Maricopa County, Arizona.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit rescheduling the third containment integrated leak rate test (ILRT) in the first 10-year service period from the fifth refueling outage (1R5) currently scheduled for May 1995 to the sixth refueling outage (1R6) planned for September 1996. The requested exemption would also allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection (ISI) period.

The proposed action is in accordance with the licensee's application for exemption dated December 28, 1994.

*The Need for the Proposed Action*

The current containment integrated leakage rate test (ILRT) requirements for Palo Verde Nuclear Generating Station, Unit 1, as set forth in Appendix J, are that, after the preoperational leak rate test, a set of three Type A tests must be performed at approximately equal intervals during each 10-year period. Also, the third test of each set must be conducted when the plant is shut down for the 10-year plant inservice inspection. To date, for Palo Verde Nuclear Generating Station, Unit 1, the preoperational and the first two periodic ILRTs have been conducted. The most recent ILRT was conducted in February 1990, approximately 59 months ago. Thus, in accordance with Appendix J, an ILRT would have to be conducted during the upcoming refueling outage (1R5, scheduled for May 1995).

The licensee has requested a schedular exemption from Appendix J. Specifically, the exemption would allow APS to delay the Unit 1 third Type A test until the September 1996 refueling outage (1R6) and allow APS to only perform the three tests required by 10 CFR Part 50, Appendix J. As such, the third Type A test would be performed within 10 calendar years from the common start date of the initial ISI interval and 10 years and 8 months from the date of Unit 1 commercial operation. With this exemption, the interval between the second and third Type A test would be approximately 81 months.

The licensee also requested an exemption that would allow the decoupling of this third test from the endpoint of the first 10-year inservice inspection period. Specifically, subsequent Type A testing would be performed in accordance with the requirements of 10 CFR Part 50, Appendix J (three Type A tests every 10 years at approximately equal intervals), commencing from the completion of the Unit 1 sixth refueling outage (1R6). A CILRT would not need to be performed during the 10-year ISI outage planned for the Spring of 1998 (1R7). Therefore, the need for the licensee's proposed action is to allow a longer interval between the Palo Verde Unit 1 second and third periodic Type A ILRTs. This action, along with decoupling the requirement to perform an ILRT at the end of the 10-year inservice inspection period, will eliminate the need for an additional test. The licensee concluded that the extension of the Type A test interval has a negligible impact on overall risk and results in a cost savings.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that the proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Palo Verde Nuclear Generating Station, Unit 1. The licensee has provided an acceptable basis for concluding that the proposed one-time extension of the Type A test interval would maintain the containment leakage rates within acceptable limits. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing on the containment. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that here are no significant nonradiological environmental impacts associated with the proposed exemption.

*Alternatives to the Proposed Action*

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is not significant increase in the allowable individual or cumulative occupation radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in the ''Final Environmental Statement Related to the Operation of Palo Verde Nuclear Generating Station, Units 1, 2, and 3,'' dated February 1982.

*Agencies and Persons Consulted*

In accordance with its stated policy, the NRC staff consulted with the Arizona State official regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated December 28, 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 Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 24th day of March 1995.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Director, Project Directorate IV–2, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.*

[FR Doc. 95–7699 Filed 3–28–95; 8:45 am]

BILLING CODE 7590–01–M

## Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 73rd meeting on April 12–13, 1995, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The meeting will be open to public attendance, with the exemption of portions that may be closed to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

The agenda for this meeting shall be as follows:

*Wednesday and Thursday, April 12 and 13, 1995—8:30 A.M. until 6:00 P.M.*

During this meeting the Committee plans to consider the following:

A. *DOE's Approach to Groundwater Travel Time*—The Committee will hear presentations by and hold discussions with representatives of the Department of Energy and the NRC staff and their consultants on the Department's approach to resolving the groundwater travel time issue associated with the proposed Yucca Mountain high-level waste repository.

B. *Meeting with the Director, NRC's Division of Waste Management, Nuclear Materials Safety & Safeguards*—The Director will provide information to the Committee on current waste management issues, which may include the use of expert judgment, a discussion of NRC's key technical uncertainties associated with Yucca Mountain, and a Performance Assessment Vertical Slice Review of volcanism and groundwater travel time.

C. *National Performance Review Phase 2*—The Committee will hear presentations by and hold discussions with the NRC staff on initiatives to streamline the federal government and regulatory process.

D. *Meeting with the Director, NRC's Office of Nuclear Materials Safety and Safeguards*—The Committee will welcome the new Director and discuss interactions between the Committee and the Office of NMSS.

E. *Preparation of ACNW Reports*—The Committee will discuss proposed reports on the Approach to Groundwater Travel Time at Yucca Mountain, a low-level waste branch technical position on performance assessment, a proposed NRC rule on radiological criteria for decommissioning and the EPA's preproposal standard on low-level waste disposal. Additional topics will be considered as time permits including the engineered barrier system for the proposed Yucca Mountain repository, the evaluation of rock mechanics for the proposed Yucca Mountain site, and DOE's program approach.

F. *Committee Activities/Future Agenda*—The Committee will consider topics proposed for future consideration by the full Committee and working groups. The Committee will also discuss organizational and personnel matters related to the selection of new ACNW members and ACNW staff. A portion of this session may be closed to public attendance to discuss information the release of which would constitute a clearly unwarranted invasion of personal privacy pursuant to 5 U.S.C. 552b(c)(6).

G. *Miscellaneous*—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 7, 1994 (59 FR 51219). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW Executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (Telephone 301/415–7360), between 7:30 A.M. and 4:15 P.M. EST.

Dated: March 24, 1995.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 95–7737 Filed 3–28–95; 8:45 am]

BILLING CODE 7590–01–M

## Biweekly Notice

### Applications and Amendments to Facility Operating LicensesInvolving No Significant Hazards Considerations

### I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 3, 1995, through March 17, 1995. The last biweekly notice was published on March 15, 1995.

### Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation

of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 28, 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 a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. 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 a 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 a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, 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 **(Project Director)**: 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment 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 for the particular facility involved.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of amendment request:* February 24, 1995

*Description of amendment request:* The proposed change would remove Section 4.3 from the Technical Specifications (TS) because the primary system testing following opening is already performed in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, as implemented in the licensee's inservice inspection program as required by TS 4.0.1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This change does not involve a significant hazards consideration for the following reasons.

1. The requested change does not involve a significant increase in the probability or consequences of an accident previously evaluated. This requested change will provide consistency between our Technical Specifications (TS) and 10 CFR 50.55a which requires testing in accordance with Section XI of the ASME Boiler and Pressure Vessel Code. The requirements contained in TS Section 4.3 were placed into TS prior to incorporation of Section XI into the ASME Boiler and Pressure Vessel Code. The NRC and industry have since recognized the ASME Boiler and Pressure Vessel Code, Section XI as the appropriate testing program. Adequate assurance of primary system integrity will be provided since primary system testing will continue to be controlled and performed in accordance with the rules for inservice inspections provided by ASME Boiler and Pressure Vessel Code, Section XI as implemented by our approved In-Service Inspection (ISI) Program, as required by TS Section 4.0.1. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The requested change deletes the current TS requirements for primary system testing by recognizing that we will continue to perform required testing consistent with 10 CFR 50.55a and ASME Boiler and Pressure Vessel Code, Section XI, as implemented by our approved ISI Program, as required by TS Section 4.0.1. This requested change does not involve the addition or modification of plant equipment, nor does it alter the design or operation of plant systems. Therefore, the requested change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The requested change does not involve a significant reduction in a margin of safety. The requested change deletes the current TS Section 4.3 requirements for primary system testing and maintains the margin of safety by continuing to perform required testing in accordance with 10 CFR 50.55a and ASME Boiler and Pressure Vessel Code, Section XI, as implemented by our approved ISI Program, as required by TS Section 4.0.1. Therefore, the requested change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* William H. Bateman

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of amendment request:* March 3, 1995

*Description of amendment request:* The proposed amendment would eliminate the requirement to perform periodic measurement testing of the response times for selected pressure and differential pressure sensors. The requirement that reactor trip and engineered safety feature response time functions be within their specified limit at least once per 18 months will be verified instead of demonstrated. The associated bases section for response time requirements will be changed to allow the sensor response time portion of the channel response time to use historical records, testing results, or vendor supplied engineering specifications. No other changes to response time methods are included in this change.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not result in a condition where the design, material, or construction standards that were

applicable prior to the change are altered nor does it modify any system interface. The same Reactor Trip System and Engineered Safety Features Actuation System instrumentation is being used; the time response allocations/modeling assumptions in the Final Safety Analysis Report (FSAR) Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the performance of the pressure and the differential pressure transmitters used in the plant protection systems. The sensors will still have response time verified by test before placing the sensor in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain sensors (assuring equipemt operable) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the sensor response characteristic. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed amendment to [sic] does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect sensor response time. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605

*Attorney for licensee:* R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

*NRC Project Director:* William H. Bateman

**Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois**

*Date of amendment request:* May 20, 1994, as supplemented February 2, 1995

*Description of amendment request:* The proposed amendment would permit the licensee to use an alternate repair criteria (ARC), designated as the F* criteria. Use of the F* criteria would allow tubes with otherwise pluggable indications, to remain in service as long as the indications are below the designated minimum distance of the F* criteria. The F* criteria for Byron and Braidwood defines a length of 1.7 inches of undegraded expanded tube within the tubesheet as the minimum distance acceptable for implementing the ARC. Below the F* length, a circumferential tube defect can exist and the tube can remain in service. The proposed amendment will change the plugging limit definition and would exclude plugging steam generator tubes with indications that satisfy the F* criteria. The F* criteria maintains the structural integrity of the degraded tube as the primary pressure boundary and allows the tube to remain in service for heat transfer and core cooling.

This alternate repair criteria qualification is documented in Babcock & Wilcox Nuclear Technologies (BWNT) Topical Report BAW-10196 P Revision 1, ''W-D4 F* Qualification Report,'' which is included as part of the licensee's submittal. The staff's proposed no significant hazards consideration determination for the requested change was published on July 6, 1994 (59 FR 34659). In response to the staff's request for additional information by letter dated February 2, 1995, the licensee revised their previous submittal.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The supporting qualification report for subject criteria demonstrates that the presence of the tubesheet will enhance the tube integrity in the region of the tube-to-tubesheet roll expansions by precluding tube deformation beyond its initial expanded outside diameter. The resistance to a tube rupture is strengthened by the presence of the tubesheet in that region. The results of hardrolling of the tube into tubesheet provides a mechanical leak limiting seal between the tube and the tubesheet. A tube rupture cannot occur because the contact between the tube and the tubesheet does not permit sufficient movement of tube material.

The type of degradation for which the F* criteria has been developed (cracking with a circumferential orientation) can theoretically lead to a postulated tube rupture event provided that the postulated through-wall circumferential crack exists near the top of the tubesheet. An evaluation including analysis and testing has been done to determine the resistive strength of the expanded tubes within the tubesheet. This evaluation provides the basis for the acceptance criteria for tube degradation subject to the F* criteria. The F* length of roll expansion is sufficient to preclude tube pullout from tube degradation located below the F* distance, regardless of the extent of the tube degradation. The Technical Specification leakage rate requirements and accident analysis assumptions remain unchanged in the unlikely event that significant leakage from this region does occur. For consistency with current offsite dose limits, the site allowable leakage limit during a MSLB has been conservatively calculated to be 12.8 gpm for Byron and 9.1 gpm for Braidwood, which includes the accident leakage from IPC in addition to the accident leakage from F* on the faulted steam generator and the operational leakage limit. The operational leakage limit of Specification 3.4.6.2.c in each of the three remaining intact steam generators shall include the operational leakage from F*. As a requirement for operation following application IPC, the projected distribution of crack indications over the operating period must be verified to result in primary to secondary accident leakage less than the site allowable leakage limit. Thus, the consequences of a MSLB remain unchanged.

The tube rupture and pullout is fully bounded by the existing steam generator tube rupture analysis included in the UFSAR. The leakage testing of the roll expanded tubes indicates that for tube expansion lengths approximately equal to the * distance, any postulated primary to secondary leakage from * tubes would be insignificant. The proposed alternate repair criteria does not adversely impact any other previously evaluated design basis accident.

The leakage from an F* tube would be limited by the tube-to-tubesheet interface since this leak would occur below the secondary face of the tubesheet. Qualification testing and previous experience indicate that normal and faulted leakage is well below Technical Specification and administrative limits creating no increase in the consequences associated with tube rupture type leakages. The UFSAR analyzed accident scenarios are still bounding since the normal and faulted leak rates are well within the normal operating limit of 150 gallons per day. This conclusion is consistent with previous F* programs approved and used at other operating plants.

All of the design and operating characteristics of the steam generator and connected systems are preserved since the F* criteria utilizes the ''as rolled'' tube configuration that exists as part of the original steam generator design. The F* joint has been analyzed and tested for design, operating, and faulted condition loadings in accordance with Regulatory Guide 1.121 safety factors. The potential for a tube rupture is not increased from the original submittal as demonstrated in the qualification analyses and testing completed in the BWNT report.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

Implementation of the proposed F* criteria does not introduce any changes to the plant design basis. Use of the criteria does not provide a mechanism to initiate an accident outside of the region of the expanded portion of the tube. In the unlikely event the failed tube severed completely at a point below the F* region, the remaining F* joint would retain engagement in the tubesheet due to its length of expanded contact within the tubesheet bore. This engagement length would prevent any interaction of the severed tube with neighboring tubes. Any hypothetical accident as a result of any tube degradation in the expanded region of the tube would be bounded by the existing tube rupture accident analysis. Tube bundle structural integrity will be maintained. Tube bundle

leak tightness will be maintained such that any postulated accident leakage from F* tubes will be negligible with regard to offsite doses.

Therefore, there is not a potential for creating the possibility of a new or different type of accident from any accident previously evaluated.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The use of the F* criteria has been demonstrated to maintain the integrity of the tube bundle commensurate with the requirements of Regulatory Guide 1.121 and the primary to secondary pressure boundary under normal and postulated accident conditions. Acceptable tube degradation for the * criteria is any degradation indication in the tubesheet region, more than the F* distance from the secondary face of the tubesheet or the top of the last hardroll contact point whichever is further into the tubesheet. The safety factors used in the verification of the strength of the degraded tube are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code and Regulatory Guide 1.121 used in steam generator design. The * distance has been verified by various testing to be greater than the length of the roll expanded tube-to-tubesheet interface required to preclude both tube pullout and significant leakage during normal and postulated accident conditions. The protective boundaries of the steam generator continue to be maintained with the use of the F* criteria. A tube with the indication of degradation previously requiring removal from service can be kept in service through the F* criteria. Since the joint is contained within the tubesheet bore, there is no additional risk associated with the previously analyzed tube rupture event. The leak testing acceptance criteria are based on the primary to secondary leakage limit in the Technical Specifications and the leakage assumptions used in the UFSAR accident analyses.

Implementation of the alternate repair criteria will decrease the number of tubes which must be taken out of service with tube plugs or repaired by sleeves. Both plugs and sleeves reduce the RCS flow margin; thus, implementation of the F* criteria will maintain the margin of flow that would otherwise be reduced in the event of increased plugging or sleeving.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Local Public Document Room location:* For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

*Attorney for licensee:* Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

*NRC Project Director:* Robert A. Capra

**Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina**

*Date of amendment request:* November 22, 1994, as supplemented January 30, March 2, and March 13, 1995.

*Description of amendment request:* This request was previously published in the Federal Register on February 15, 1995 (60 FR 8746). It is being renoticed to provide clarification to the scope of the original request. The amendments would revise Technical Specification (TS) 3.8 to establish restricted loading patterns and associated burnup criteria for placing fuel in the Oconee spent fuel pools. In addition, the Design Features sections associated with the reactor and fuel storage would be revised. These changes are necessary to address two new fuel designs which have increased initial fuel enrichment and therefore cannot be stored in the spent fuel pools under existing TS or loaded into the reactor. An administrative change would be made to TS 6.9.1 to include spent fuel pool boron concentration in the Core Operating Limits Report. Other administrative changes would be made in the Design Features section to make the specification consistent with wording in the standard TS. Finally, the two additional supplements to the original request are referenced herein.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Each accident analysis addressed in the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to changes in Cycle 15 parameters to determine the effect of the Cycle 16 reload and to ensure that the acceptance criteria of the FSAR safety analyses remain satisfied. The transient evaluation of Cycle 16 is considered to be bounded by previously accepted analyses. Section 7 of the Reload Report addresses ''Accident and Transient Analysis'' for this core reload.

There is no increase in the probability or consequences of an accident due to the spent fuel storage restrictions proposed in this amendment request. It has been shown that the calculated, worst case $k_{eff}$ for this area is [less than or equal to] 0.95 under all conditions. There is no increase in the probability of a fuel drop accident in the SFP [spent fuel pool] since the mass of the new assemblies is not significantly different from the mass of the old assemblies. The likelihood of other accidents, previously evaluated and described in the FSAR, is also not affected by the proposed changes. In fact, it could be postulated that since the increase in fuel enrichment will allow for extended fuel cycle lengths, there will be a decrease in fuel movement and the probability of an accident may actually be reduced. There is also no increase in the consequences of a fuel rod drop accident in the SFP since the fission product inventory of individual fuel assemblies will not change significantly as a result of increasing the initial enrichment. In addition, no change to safety related systems is being made. Therefore, the consequences of a fuel rupture accident remain unchanged. In addition, it has been shown that $_{Keff}$ all conditions. Therefore, the consequences of a criticality accident in the SFP remain unchanged as well. The above analysis ensures that the proposed reload amendment request will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The analyses performed in support of this reload are in accordance with the NRC approved methods delineated in Specification 6.9.2. The predicted operating characteristics of Oconee 3 Cycle 16 are similar to previously licensed designs. The Mark B10T and Mark B11 fuel assembly designs remain mechanically compatible with all fuel handling equipment. Therefore, no new or different kind of fuel handling accident is created by the proposed amendment request.

Section 15.11 of the Oconee FSAR states that the refueling boron concentration is maintained such that a criticality accident during refueling is not considered credible. The proposed amendment request continues to assure that a criticality accident in the SFP or during refueling is not credible. The double contingency principle discussed in ANSI N-16.1-1975 and the April 1978 NRC letter allows credit for soluble boron under other abnormal or accident conditions, since only a single accident need be considered at one time. Thus, by requiring a minimum boron concentration in the SFP, a criticality accident caused by violating the SFP storage restrictions is not considered credible. Therefore, the proposed amendment request does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The Oconee 3 Cycle 16 design was performed using the NRC approved methods given in Specification 6.9.2. The safety limits for Oconee 3 Cycle 16 are unchanged from previous cycles. The limits and margins summarized in the Oconee 3 Cycle 16 Reload Report are well within the allowable limits and requirements, and reflect no reductions to any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

*Attorney for licensee:* J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

*NRC Project Director:* Herbert N. Berkow

**Entergy Operations Inc., Docket No. 50-382, Waterford Steam ElectricStation, Unit 3, St. Charles Parish, Louisiana**

*Date of amendment request:* December 14, 1993, as supplemented by letter dated March 3, 1995.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs) by removing the reactor vessel material specimen withdrawal schedule and by updating the reactor coolant system pressure-temperature (P-T) curves. The specimen withdrawal schedule will be relocated to the Updated Final Safety Analysis Report (UFSAR). The original Notice was published on January 19, 1994 (59 FR 2867).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Although the Reactor Vessel material specimens withdrawal schedule will be removed from the Technical Specifications, the Technical Specifications bases will continue to provide background information on the use of the data obtained from material specimens. Also, updates to the schedule will continue to be submitted to the NRC for approval prior to implementation.

Operating the plant in accordance with the new, updated P-T Curves will assure preserving the structural integrity of the reactor vessel over the life of the plant. The pressure and temperature limits were developed in accordance with 10 CFR [Part] 50 Appendix G requirements.

Removing the requirements associated with the previous exemption to Appendix H (TS 4.4.8.1.2 items a & b) is purely an administrative change.

Therefore, the proposed changes will not significantly increase the probability or consequences of any accident previously evaluated.

Removal of the Reactor Vessel material specimen schedule from the Technical Specifications has no impact on accidents at the plant. Updates to the schedule will still be required to be submitted to the NRC prior to implementation per Section II.B.3 of Appendix H to 10 CFR Part 50.

Also, updates to the P-T Curves will not create a new or different type [of] accident. The reactor vessel beltline P-T limits were revised applying the general guidance of the ASME Code, Appendix G procedures with the necessary margins of safety for heatup, cooldown and inservice hydro test conditions.

The change to TS 4.4.8.1.2 items a & b is purely administrative.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Removal of the schedule for Reactor Vessel material specimen withdrawal from the Technical Specifications does not impact the margin of safety. The schedule will continue to receive NRC review and approval prior to implementation of updates to the schedule.

Updates to the P-T Curves are provided to preserve the margin to [sic] safety to assure that when stressed under operating, maintenance and testing the boundary behaves in a non-brittle manner and the probability of rapidly propagating fracture is minimized.

The change to TS 4.4.8.1.2 items a & b is purely administrative.

Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

*Attorney for licensee:* N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

*NRC Project Director:* William D. Beckner

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of amendment request:* February 22, 1995

*Description of amendment request:* The proposed changes are administrative in nature in that reference to an ''automatic'' containment air lock tester will be deleted from TS 4.6.1.3. The automatic airlock tester is no longer being used.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature in that the revision will eliminate the wording associated with optional use of the personnel airlock automatic leakage tester. The requirement for testing the personnel airlock at a pressure greater than or equal to $P_a$ for at least 15 minutes remains unchanged. The acceptance criteria of personnel airlock seal leakage less than 0.01 $L_a$ is also unchanged. The automatic leakage tester is not an accident initiator nor a part of the success path(s) which function to mitigate accidents evaluated in the plant safety analyses. The proposal does not involve any changes to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor does it alter any assumptions or conditions in the plant safety analyses. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2)Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment to remove the reference to the personnel airlock automatic tester from the technical specifications will not introduce any new failure modes or system interactions, nor will it require the installation of any new or modified equipment. The requirement to leak test the personnel air locks will not be changed. Thus, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment is administrative in nature in that it eliminates the reference to the personnel airlock automatic leakage tester but does not alter the surveillance and acceptance criteria for such testing. Seal leakage testing is performed in accordance with an approved plant procedure which allows use of either an automatic tester or a portable testing cart. The automatic leakage tester is not used to actuate safety related equipment, provide interlocks, or perform plant control functions. The conditions evaluated in the plant accident and transient analyses do not involve this tester. The proposed change does not alter the basis for any technical specification that is related to the establishment of, or the maintenance of, a nuclear safety margin. Therefore, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above discussion and the supporting Evaluation of Technical Specification changes, FPL has determined that the proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* David B. Matthews

**Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of amendment request:* February 27, 1995

*Description of amendment request:* The proposed amendment will change Table 3.3-3 and 3.3-4 to accommodate an improved coincidence logic and relay replacement for the 4.16 kV Loss of Voltage Relays. Actions required for certain trip units with the number of operable channels one less than the total number of channels will also be changed. In addition, the format used to state the time delay for the 4.16 kV Degraded Voltage trip unit will be revised.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1)Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will result in a better overall posture of the plant under degraded/loss of voltage conditions. The design upgrade for the 4.16 kV Loss of Voltage system is more reliable, has inherently higher accuracy, and is easier to maintain and calibrate in the field. The coincidence logic will eliminate the spurious plant trip potential from the existing design. Restating the maximum time delay for the 4.16 kV Degraded Voltage (coincident with SIAS [safety injection actuation signal]) protective relays in a ''less than'' format will assure that the transfer of power to the on-site sources occurs before the level of voltage becomes injurious to the equipment under accident conditions, and will ensure that stripping of the emergency power busses and loading of the EDG (s) [emergency diesel generators] will occur within the time allowed by original design criteria. The maximum allowed time delay for this function is not being increased, and the time delay assumed in the accident analyses for connecting the emergency bus to the diesel generator will not be exceeded. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2)Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not change the operation, function or modes of plant operation. The ability of the loss of power and degraded grid voltage protection scheme to properly transfer from the off-site to the on-site power sources is being maintained. The relays in the improved design of the 4.16 kV Loss of Voltage function are of the type presently being used in identical applications at both St. Lucie plant units. No new hazards are created or postulated which may cause an accident different from any accident previously analyzed. The modifications will result in a more sensitive protection scheme allowing continuous operation without unnecessary challenges to the safety systems, and will continue to provide adequate protection to all the safety equipment. Therefore, operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The capability of the loss of power and degraded grid voltage protection scheme is enhanced by the changes being proposed and is confirmed by the existing surveillance requirements. The planned modifications to the 4.16 kV Loss of Voltage function will result in a more sensitive undervoltage detection system and reduce the possibility of spurious actuation. The maximum time assumed in the safety analyses for connecting each Emergency Bus to its dedicated Emergency Diesel Generator is not being changed, and assurance that separation from a degraded off-site power source will occur before this time interval is exceeded during accident conditions will be maintained by the proposed amendment. Accordingly, the margin of safety is not affected. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS [Technical Specifications] Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* David B. Matthews

**Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida**

*Date of amendment request:* February 27, 1995

*Description of amendment request:* The proposed amendment will modify surveillance requirement (SR) 4.9.8.1 and 4.9.8.2 to allow a reduction in the required minimum shutdown cooling flow rate under certain conditions during operational MODE 6. In addition, the format of the SR will be changed to clarify the intent of the stated surveillances.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation of the SDCS [shutdown cooling system] is not an accident initiator and, therefore, does not significantly increase the probability of an accident previously evaluated.

The proposed change will allow a plant configuration needed to perform maintenance activities on LPSI [low-pressure safety injection]/SDCS headers by isolating one injection flow line for an operable SDCS train during certain MODE 6 conditions. In the event of a failure or unavailability of the alternate SDCS train, this configuration could result in the proposed minimum flow rate.

The proposed change only modifies the minimum required flow rate, and does not affect the probability of this event. FPL has evaluated the proposed value of reactor coolant flow and has shown that the bases for the existing LCO [limiting condition for operation] will continue to be satisfied. Therefore, there are no significant increases in the consequences of any event from the proposed change. No other system interactions are involved related to previously evaluated accidents, and the proposed change has no adverse effect on any other system performance.

Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the normal operation of the plant. No new

systems are introduced and there is no adverse effect on any other system configuration or performance. The change will, however, allow isolation of one SDCS injection flow path for maintenance activities in MODE 6 under controlled conditions. The failure of the alternate SDCS train does not create a new accident and has been further evaluated in the reduced flow configuration, and shown to meet all the TS bases requirements. Therefore, operation of the facility in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3)Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The safety considerations related to the proposed change are described in the bases to TS [Technical Specification] 3/4.9.8. FPL has evaluated the proposed reduction in SDCS flow requirement, under stated conditions, and has shown that the proposed flow rate meets all the TS bases requirements involving decay heat removal, boron dilution, and stratification. Established acceptance criteria providing margins of safety are not being changed by the proposed amendment. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Based on the discussion presented above and on the supporting Evaluation of Proposed TS Changes, FPL has concluded that this proposed license amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

*NRC Project Director:* David B. Matthews

**Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia**

*Date of amendment request:* March 14, 1995

*Description of amendment request:* Georgia Power Company (GPC or the licensee) has proposed a temporary change to Hatch Unit 2 Technical Specification (TS) Required Action 3.3.6.1.F.1, and associated Bases. The proposed change would add a note to the Primary Containment Isolation Instrumentation actions to permit the drywell and wetwell purge valves which are isolated by the drywell radiation monitor signal to be opened with one inoperable drywell radiation monitor. The note will expire prior to startup from the Hatch Unit 2 refueling/maintenance outage scheduled in the fall of 1995, at which time the radiation monitor can be repaired or replaced. Should the unit be forced into a cold shutdown of sufficient duration (i.e., drywell de-inerted), the inoperable radiation monitor will be repaired at that time. The TS containment sections allow these valves to be opened for inerting, de-inerting, and pressure control. However, with radiation monitor 2D11-K621B inoperable, the primary containment isolation instrumentation TS require the valves be closed until the unit achieves a cold shutdown condition. Without the ability to open these valves until cold shutdown, pressure control and de-inerting are difficult.

The purpose of the high drywell radiation primary containment isolation signal is to limit fission product release following a postulated loss-of-coolant accident (LOCA) with significant fuel damage. It is one of several signals which isolate the primary containment vent and purge valves. A high drywell pressure signal will not only shut down the reactor and generate a LOCA signal, it will also isolate these valves.

High drywell radiation indicates possible gross failure of the fuel cladding. The generation of this isolation signal is not credited in any accident or transient analysis. Chapter 15 of the Hatch Unit 2 Final Safety Analysis Report (FSAR) discusses the radiological consequences of a postulated large break LOCA with fuel failure to show conformance to 10 CFR Part 100 and 10 CFR Part 50, Appendix A. This analysis is not affected.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The change does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Opening the containment purge and vent valves with an inoperable drywell radiation monitor will not increase the probability of any previously evaluated accident. The fact that the monitor cannot send an automatic isolation signal will not significantly affect the consequences of an accident. The function of the primary containment isolation signal is to detect and limit release of fission products following significant fuel damage. The generation of this isolation signal is not credited in any accident or transient analysis. Chapter 15 of the Unit 2 FSAR evaluates the radiological consequences of a postulated design basis LOCA with non-mechanistic fuel damage. This licensing evaluation shows conformance to the radiological limits presented in 10 CFR 100 and 10 CFR 50, Appendix A. The results of this analysis are not affected since the valves are otherwise operable and receive isolation signals from other instrumentation.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve the installation of any new equipment, or the modification of any equipment designed to prevent or mitigate the consequences of accidents or transients. Therefore, the change has no effect on any accident initiator, and no new or different type of accidents are postulated to occur.

3. The proposed amendment does not result in a significant reduction in the margin of safety.

As discussed in Item 1 above, the assumptions and results of the licensing evaluations remain unchanged. Therefore, the margin of safety is not significantly affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

*NRC Project Director:* Herbert N. Berkow

**GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey**

*Date of amendment request:* February 28, 1995

*Description of amendment request:* Technical Specification (TS) Section 6.5.1.12 would be revised to delete the requirement to render determinations in writing with regard to whether or not activities listed in TS Sections 6.5.1.2 and 6.5.1.5 constitute an unreviewed safety question.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed change removes the requirement to render determinations in writing with regard to whether or not opposed changes to the Technical Specifications and investigations of violations of Technical Specifications constitute an unreviewed safety question. This change is considered an administrative change to remove a requirement which is not relevant to these activities and which is also consistent with the BWR Revised Standard Technical Specifications (NUREG 1433). Existing requirements to perform Technical and Independent Safety Reviews of these activities are not affected. Therefore, the proposed amendment does not significantly increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is considered administrative since it removes a requirement which is not relevant to the affected activities, and which is also consistent with the BWR Revised Standard Technical Specifications Administrative Controls for Review and Audit. Existing requirements to perform Technical and Independent Safety Reviews for the affected activities are not changed. Therefore, this change has no effect on the possibility of creating a new or different king of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed change removes a requirement which is not relevant to the affected activities. Existing Technical Specification requirements to perform Technical and Independent Safety Reviews for the affected activities are not changed and therefore, will continue to ensure that such activities properly address nuclear safety and safe plant operation. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director:* Phillip F. McKee

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* February 15, 1995

*Description of amendment request:* The proposed amendment would modify (by relocation to the Technical Requirements Manual) Technical Specification (TS) 3/4.3.3.7, Chemical Detection Systems, and TS 3/4.8.4.1, Electrical Equipment Protective Devices - Containment Penetration Conductor Overcurrent Protective Devices, and the associated Bases.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on the probability or consequences of any accident previously evaluated.

The proposed change does not alter the assumptions previously made in the listed Technical Specifications. The proposed change allows the Commission and South Texas more effective use of personnel resources to control requirements that meet the four Criteria in the Final Policy Statement. The proposed change will not change the dose to workers.

Since the probability of a [sic] accident is unaffected by the administrative relocation of the listed Technical Specifications, and the doses are not affected and do not exceed acceptance limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. Whether the listed Technical Specifications and Bases are located in Technical Specifications or the Technical Requirements Manual has no effect on any previously evaluated accident. It does not represent a change in the configuration or operation of the plant and, therefore, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The proposed change to Technical Specification 3.3.3.7, Chemical Detection Systems and 3.8.4.1, Electrical Equipment Protective Devices-Containment Penetration Conductor Overcurrent Protective Devices, is of an administrative nature in that the listed Technical Specifications and Bases will be relocated in entirety to the Technical Requirements Manual (TRM). Any future changes to the relocated requirements will be in accordance with 10CFR 50.59 and approved station procedures. The margin of safety is not reduced when the requirements are relocated to a Licensee-controlled document because the requirements to change a License Basis Document via the 10CFR 50.59 process ensures the same questions concerning the margin to safety required for a License Amendment are asked. The major difference is the time and expense required for the License Amendments. Therefore, this proposed change does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

*NRC Project Director:* William D. Beckner

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* February 15, 1995

*Description of amendment request:* The proposed amendment would modify Technical Specification 4.6.2.3.a.2 (and associated Bases) to reflect the reactor containment fan cooler flow rate assumed in the accident analyses and to specify that this flow is provided by the component cooling water system.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specification 4.6.2.3.a.2 is to reflect the cooling water temperature assumed in the accident analyses. The revised Technical Specification surveillance requirement will change the cooling water flow rate requirement to each Reactor Containment Fan Cooler from greater than or equal to 550 gallons per minute to greater than or equal to 1800 gallons per minute.

The proposed change, which will result in an increased acceptance criteria for the flow to the Reactor Containment Fan Coolers, is not indicative of accident initiators. The change will ensure that the surveillance requirement reflects the flow rate value assumed in the South Texas Project accident analyses and that the design and operability requirements of equipment important to safety are ensured.

The accident mitigation features of the plant are not affected by the proposed change since the change reflects the original assumptions made in the design of the accident mitigation features of the South Texas Project. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not create the possibility of a new or different kind of accident previously evaluated in the Safety Analysis Report because all the accidents were analyzed with a flow rate of 1800 gallons per minute to the Reactor Containment Fan Cooler.

3. Does the proposed change involve a significant reduction in a margin of safety?

There will be no adverse affects on margins of safety since a more stringent surveillance requirement will be applied to the Reactor Containment Fan Cooler. The Technical Specification operability and surveillance requirements are not reduced but rather made more restrictive by this proposed change. The change ensures that the margin of safety originally intended for the Reactor Containment Fan Coolers is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Local Public Document Room location:*Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

*NRC Project Director:* William D. Beckner

**IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa**

*Date of amendment request:* February 13, 1995

*Description of amendment request:* The proposed amendment would delete the audit frequency requirements from the Duane Arnold Energy Center Technical Specifications (TS) and add them to the Quality Assurance Program Description located in the Updated Final Safety Analysis Report.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment does not involve a change in the probability or consequences of an accident previously evaluated. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not impact the operation of the plant or the plant's response to any accident. Because it will allow management the flexibility to adjust the audit frequencies based upon the performance of the program or organization being audited, the overall performance of the organization will be improved.

(2) The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not affect the operation or design of the plant; therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated. The audits will continue to be performed to provide assurance of conformance to the applicable requirements.

(3) The proposed amendment will not reduce the margin of safety. No physical changes will occur as a result of this amendment. The change is administrative in nature and does not affect the operation or design of the plant. Safety limits and limiting safety system settings are not affected by this proposed amendment. The amendment removes requirements for frequency of audits from the TS, thus permitting more effective scheduling of audits based on performance and the status of the activities audited. This should result in a more effective audit program that will contribute to an improvement in the overall performance of the organization.

The NRC staff has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401

*Attorney for licensee:* Jack Newman, Kathleen H. Shea, Morgan, Lewis & Bockius, 1800 M Street, N. W., Washington, D. C. 20036-5869NRC Acting Project Director: John N. Hannon

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of amendment request:* February 10, 1995

*Description of amendment request:* The proposed amendment would modify Technical Specification 3.3.2.1, ''Control Rod Block Instrumentation,'' to revise two surveillance requirements and their associated notes for the Rod Withdrawal Limiter (RWL) mode of the Rod Pattern Control System. These changes will conform these requirements to their original bases and eliminate the potential for unnecessary power reductions.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(1) The proposed changes are consistent with the Rod Withdrawal Error (RWE) analysis presented in Clinton Power Station (CPS) Updated Safety Analysis Report (USAR) Section 15.4.2. The proposed changes do not result in any change to plant equipment or operation; only the plant conditions for which the Rod Withdrawal Limiter (RWL) function(s) are required to be tested are being revised. The proposed changes continue to ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. The proposed changes have no impact on the probability of occurrence of a RWE event. Therefore, the proposed changes do not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not result in any changes to plant equipment or operation; only the plant conditions for which the RWL

function(s) are required to be OPERABLE and tested are being revised. The proposed changes continue to ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. As a result, no new failure modes are introduced. The proposed changes are clearly within the limits of plant operation as described in the USAR and the RWE analyses. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed changes revise the testing requirements to be consistent with the testing required prior to Amendment No. 95. The proposed changes ensure that the RWL is OPERABLE and tested to ensure that continuous control rod withdrawals remain within the assumptions of the RWE analyses. The proposed changes are clearly within the limits of plant operation as described in the USAR and the RWE analyses. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

*Attorney for licensee:* Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th St., Decatur, Illinois 62525.

*NRC Acting Project Director:* John N. Hannon

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine YankeeAtomic Power Station, Lincoln County, Maine**

*Date of amendment request:* February 14, 1995

*Description of amendment request:* The proposed amendment would change responsibility for audits of the emergency and security plans and their implementing procedures. Audit responsibility would change from the licensee's Nuclear Safety Audit and Review (NSAR) Committee and the Plant Operation Review Committee (PORC), to the respective emergency and security plans. The proposed amendment is consistent with the guidance of NRC Generic Letter 93-07, Modification of the Technical Specification Administrative Control Requirements for Emergency and Security Plans, dated December 28, 1993.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the Standards of 10 CFR 50.92(c). A summary of the licensee's analysis is presented below:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes do not have a direct effect on the physical plant or the maintenance of the physical plant, but would improve the safe operation of the plant by reducing the administrative burden of PORC and NSAR. This change would allow a better focus of management resources to the operational safety oversight of plant activities. The requirement to review, audit, document, control, and submit for regulatory review, the Emergency Plan and the Security Plan and their implementing procedures, is defined by regulation and remains unchanged. The proposed changes will not, of themselves, result in any reduction in the effectiveness of either the Emergency Plan or the Security Plan to protect the health and safety of the public. The proposed changes, therefore, will not increase the probability or consequences of an accident previously evaluated.

2. The proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

This change is administrative in nature and does not change or modify the physical plant or maintenance of the physical plant. Applicable regulations continue to enforce the requirement for review and audit by individuals not responsible for implementation of the existing programs. Consequently, independent oversight of the programs and procedures is not compromised by these proposed changes. The possibility of a new or different accident from any previously evaluated as a result of future changes in the implementation of the Security or Emergency Plans is not created.

3. The proposed amendment would not involve a significant reduction in a margin of safety.

The proposed changes will revise the administrative responsibilities of the PORC and NSAR committees allowing a better focus of resources on operational safety reviews. The requirements of the applicable Federal and State regulations ensure the continued effective oversight of the implementation of Security and Emergency Plans. Consequently, the adoption of the proposed changes would not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 329 Bath Road, Brunswick, Maine 04011

*NRC Project Director:* Walter R. Butler

**Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut**

*Date of amendment request:* October 18, 1994, as supplemented February 21, 1995.

*Description of amendment request:* The following changes requested in the October 18, 1994, submittal were published in **Federal Register** on November 9, 1994 (59 FR 35876). The proposed amendment would require three Type A overall Integrated Containment Leakage Tests be conducted at approximately equal intervals during shutdowns during each 10 year service period. For the third Type A test for the second 10-year period, it would be conducted during the thirteenth refueling outage extending the second 10-year service period to the end of the thirteenth refueling outage. The amendment would also change the Containment Leakage Bases by reflecting the conditions of a proposed exemption to 10CFR50, Appendix J, that would remove the requirement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection.

By letter dated February 21, 1995, the licensee withdrew the action related to conducting the third Type A test for the second 10-year period during the thirteenth refueling outage and the reference to a proposed exemption to 10 CFR 50, Appendix J, that would remove the requrement that the third Type A test for each 10-year period be conducted when the plant is shutdown for the 10-year plant inservice inspection. The following basis for the proposed no significant hazards consideration determination relates to the February 21, 1995, request.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

The proposed change does not involve a SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

Type A tests are performed to ensure that the total leakage from containment does not exceed the maximum allowable primary containment leakage rate at the design pressure. This assures compliance with the dose limits of 10CFR100.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

Historically, Type A tests have a relatively low failure rate where Type B and C testing (local leakage rate tests) could not detect the leakage path. Most Type A test failures are attributed to failures of Type B or C components (containment penetrations and isolation valves). Type B and C components are tested per Surveillance Requirement 4.6.1.2.d of the Millstone Unit No. 2 Technical Specifications. These tests are required to be conducted at intervals no greater than 24 months. These local leakage rate tests provide assurance that containment integrity is maintained. The Type B and C tests will continue to be performed in accordance with the requirements of Surveillance Requirement 4.6.1.2.d.

The previous Type A, B, and C tests demonstrate that Millstone Unit No. 2 has maintained control of containment integrity by maintaining a conservative margin between the acceptance criterion and the ''As-Found'' and ''As-Left'' leakage results. Based on this, the Millstone Unit No. 2 containment is considered to be in sound condition.

Based on the above, the proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility in scheduling the Type A tests. It does not make any physical or operational changes to existing plant structures, systems, or components. In addition, the proposed change does not modify the acceptance criteria for the Type A tests. Maintaining the leakage through the containment boundary to the atmosphere within a specific value ensures that the plant complies with the requirements of 10CFR100. The containment boundary serves as an accident mitigator; it is not an accident initiator. Therefore, the proposed change to Surveillance Requirement 4.6.1.2.a does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in the margin of safety.

The proposed change to Surveillance Requirement 4.6.1.2.a of the Millstone Unit No. 2 Technical Specifications will increase the flexibility for scheduling the Type A tests. It does not modify the maximum allowable leakage rate at the design containment pressure, does not impact the design basis of the containment, and does not make any physical or operational changes to existing plant structures, systems, or components.

Based on the above, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

*Attorney for licensee:* Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

*NRC Project Director:* Phillip F. McKee

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* February 1, 1995

*Description of amendment request:* This Technical Specification (TS) change would modify the applicable operational conditions for the secondary containment isolation radiation monitors located on the refueling floor and for the radiation monitor located in the railroad access shaft. Specifically, for the refueling floor exhaust duct and wall exhaust duct radiation monitors, the proposed change would modify the applicable operational condition during specific control rod testing evolutions which are core alterations and would indicate that the operability requirement does not apply during shutdown margin demonstrations. For the railroad access shaft exhaust duct radiation monitor, the change to the TS would modify the applicable operational condition to address plant evolutions involving irradiated fuel transfer within the railroad accessshaft and above the access shaft with the equipment hatch open.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. This proposal does not involve a significant increase in the probability or consequences of an accident previously evaluated.

a. The proposed change to the applicable operational condition for the refueling floor process radiation monitors does not affect the probability of the design basis accidents. The monitors function in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust system and provide isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and accident probability. The monitors act to mitigate the offsite effects of airborne contamination producing accidents, they are not potential accident initiators.

The proposed change does not result in a significant increase in the consequence of the design basis accidents. The postulated event associated with control rod related CORE ALTERATIONS which could result in increased Zone III airborne radioactivity concentrations is criticality resulting from a single control rod withdrawal, resulting in release of fission products. The probability of an unintended criticality from a single control rod withdrawal is low, and the potential for this criticality to result in fuel failure under shutdown conditions is even more remote. Withdrawal of a single control rod is an analyzed evolution during which time adequate design and operating controls exist to preclude criticality. However, in the unlikely event criticality should occur, the potential offsite effects would not be significant. Localized criticality involving a leaking rod, or criticality induced fuel failure, are the postulated mechanisms by which an increase in Zone III airborne radioactivity could be attained. Neither of these postulated, but very unlikely events, will result in radioactive release in excess of 10CFR100 limits. Any release would be monitored by instrumentation in the Reactor Building vent stack required to be OPERABLE at all times. In addition, Area Radiation Monitors are installed on the refueling floor to supplement the refueling floor process radiation monitors by providing radiological information to plant operators. Operators can use the vent stack and/or ARM information to manually initiate secondary containment isolation if radiological conditions warrant this action. Emergency Operating Procedures direct operator action in the event of higher than normal radiation readings.

b. The proposed change to the applicable operational condition for the railroad access shaft process radiation monitor does not affect the probability of the design basis accidents. The monitor functions in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust

system and provides isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and accident probability. The monitor acts to mitigate the offsite effects of airborne contamination producing accidents, it is not a potential accident initiator.

The proposed change does not result in a significant increase in the consequence of the design basis accidents. The design intent of the railroad access shaft process radiation monitor is to monitor radiation in the unfiltered air from the Zone III railroad access shaft exhaust system, and provide signals which automatically isolate the Zone III portion of the secondary containment, start the Standby Gas Treatment System, and start the Recirculation System (Zone III) on a high radiation condition within the access shaft. This function is intended to limit the consequences of a fuel handling accident in the railroad access shaft. The monitor has no significant capability to react to a CORE ALTERATION related transient, or one resulting from operations with the potential to drain the reactor vessel. The design intent of the monitor is maintained under the proposed change, as the proposed change focuses monitor operability on conditions when irradiated fuel is in the railroad access shaft or above it with the railroad access shaft cover open.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without significantly increasing the probability or consequences of an accident previously evaluated.

II. This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access ShaftExhaust Duct Radiation Monitor function in response to an airborne radioactivity concentration in the unfiltered air from the Zone III exhaust system and provide isolation signals which limit offsite doses to within regulatory limits. As such, there is no correlation between monitor operability and the potential for creating new or different accident scenarios. The monitors act to mitigate the offsite effects of airborne contamination producing accidents, they are not potential accident initiators.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without creating the possibility of a new or different kind of accident from any accident previously evaluated.

III. This change does not involve a significant reduction in a margin of safety.

a. The proposed change to the applicable operational condition for the refueling floor process radiation monitors does not involve a significant reduction in the margin of safety. The postulated event associated with control rod related CORE ALTERATIONS which could result in increased Zone III airborne radioactivity concentrations is criticality resulting from a single control rod withdrawal under shutdown conditions. There are multiple barriers to protect against the postulated event of criticality from a single rod withdrawal. Technical Specifications, plant operating procedures, and plant design control the withdrawal of control rods to minimize the potential for an inadvertent criticality event during shutdown. In addition, a fuel loading verification is performed, per procedure, on the as loaded core configuration to ensure that the fuel is loaded correctly. Each reload core is designed such that there is at least a 99.9% probability with a 95% confidence that the core will not be critical as a result of a single control rod withdrawal. The safety margin associated with a potential criticality event from a single control rod withdrawal, under shutdown conditions, is not impacted by the proposed change.

In the unlikely event that control rod manipulations resulted in reactor criticality, adequate protective measures are provided by core monitoring instrumentation required to be operable in OPCON 5. Under this scenario, assuming the inadvertent control rod withdrawal resulted in a significant reactivity addition, the Reactor Protection System (RPS) would respond by inserting all control rods via the Scram function. The RPS monitors for recriticality during OPCON 5 with SRMs (per Technical Specification Section 3.9.2), and IRMs. The safety margin associated with RPS response to a criticality event, under shutdown conditions, is not impacted by the proposed change.

Assuming that a criticality did occur as a result of a single control rod withdrawal, any increase in Zone III airborne radioactivity from a previously failed assembly located in the vicinity of the withdrawn control rod or a fuel rod failure associated with the control rod withdrawal would not result in an offsite dose exceeding regulatory limits. Assuming that criticality occurs following core loading and verification (i.e. ≤20 days after shutdown), the offsite dose as a result of the release of fission products from a single failed fuel rod would be much less than 1% of the applicable site boundary limits. In addition, the failure of four complete fuel assemblies (i.e. nearly equal to 300 fuel rods in the bundles surrounding the withdrawn control rod) would not result in offsite dose exceeding the applicable regulatory limits. Failure of more than four complete fuel assemblies due to the withdrawal of a single control rod in OPCON 5 is not considered credible. In fact, given the initial conditions of this event (i.e. cold, zero power, subcritical) and the reactivity characteristics of the fuel (i.e. negative fuel temperature reactivity coefficient) it is very unlikely that a criticality of this nature would result in failure of any fuel rods. Although the refueling floor process radiation monitors would not be OPERABLE, Zone III airborne radioactivity concentrations can be independently detected with Area Radiation Monitors (ARMs) which are located on the refueling floor. These monitors provide control room indication, and would alert operators to changing radiological conditions on the refueling floor. In addition to providing personnel notification, the ARMs act as a supplement to the process radiation monitors in detecting abnormal migrations of radioactive material in or from the process streams. Operators can manually initiate secondary containment isolation based on ARM input. The Emergency Operating Procedures require the operators to take appropriate actions on higher than normal radiation readings. Moreover, any airborne radioactivity leakage from Zone III would be monitored via instrumentation in the Reactor Building vent stack required to be OPERABLE at all times; local alarms, remote recording, and main control room and Technical Support Center alarms are provided. Operators can manually initiate secondary containment isolation based on exhaust sample readings. Due to the bounding regulatory limits and the redundant monitoring and operator response capabilities, the safety margin associated with the potential for offsite airborne radioactive release, under shutdown conditions, is not significantly impacted by the proposed change.

b. The elimination of operability requirements associated with CORE ALTERATIONS, operations with the potential to drain the reactor vessel, and other irradiated fuel moves not associated with the railroad access shaft, do not affect the ability of the railroad access shaft process radiation monitor to implement its design function. As such, the current operability requirements for the monitor which involve evolutions in areas other than the railroad access shaft do not contribute to the margin of plant safety; thus eliminating these operability requirements will not reduce the margin of plant safety.

For the above stated reasons, the applicable operational condition for Refueling Floor Exhaust Duct High Radiation Monitors, Wall Exhaust Duct Radiation Monitors, and the Railroad Access Shaft Exhaust Duct Radiation Monitor can be modified without a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* John F. Stolz

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* February 2, 1995

*Description of amendment request:* This amendment would change the Technical Specifications for the units to increase the licensed discharge fuel assembly exposure for SPC 9X9-2 fuel from 40 to 45 GWD/MTU.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not:

I. Involve a significant increase in the probability or consequences of an accident previously evaluated.

PP&L—s technical basis for increasing the licensed discharge exposure limit as proposed is documented in PL-NF-94-005-P-A. The technical basis includes onsite fuel inspections, fuel design analyses and evaluations, and an in-reactor fuel assembly extended exposure demonstration. In response to NRC concerns on fuel failures at higher exposures, very conservative analyses were performed for the CRDA [control rod drive assembly] assuming very low failure thresholds, and offsite dose calculation results were shown to be well within regulatory limits, even at a failure threshold of 30 cal/gm. The NRC has previously reviewed and approved all of the above information, and inspection results have met all approved criteria.

An evaluation of FSAR [Final Safety Analysis Report] design basis events was performed to determine the impact of the proposed increase in fuel exposure. The LOCA [loss-of-coolant accident] analysis performed in support of PP&L—s Power Uprate efforts incorporated the effects of higher exposure and LHGR [linear heat generation rate]. From a radiological release perspective, the Power Uprate evaluations of LOCA, MSLB [main steam line break], CRDA, and refueling accidents each bound the potential impacts of extended exposure fuel.

Those reload analyses deemed necessary to confirm that the above conclusions remain valid will be performed on a cycle-specific basis.

Based on the above, the proposed action will not involve a significant increase in the probability or consequences of an accident previously evaluated.

II. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed action will increase the residence time of fuel within the Susquehanna reactors. The potential consequences of this action remain solely with the fuel—s ability to perform within specified limits during the increased duty, and were reviewed in I above. All required evaluations involving fuel impacts have been previously evaluated.

Based on the above, the proposed action cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

III. Involve a significant reduction in a margin of safety.

The proposed action will allow increasing the licensed discharge fuel assembly exposure limit, resulting in increases in the fuel rod LHGR and LHGR for APRM [average power range monitor] Setpoints, which are controlled via the Technical Specifications and the Core Operating Limits Report.

The discussion in I. above delineates the evaluations performed to support this action. It concludes that neither the probability nor the consequences of events previously evaluated will be affected. Operator performance will not be affected, because the operators only monitor the ratio of the fuel LHGR to the fuel design limit. No other potentially impacted safety margins have been identified.

Based on the above, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:*Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* John F. Stolz

**Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania**

*Date of amendment request:* February 10, 1995

*Description of amendment request:* The proposed amendment would modify the Susquehanna Steam Electric Station, Unit 1 and 2 Technical Specifications (TS) to (1) extend the allowable out-of-service times (AOTs) for maintenance and repair and the surveillance test intervals (STIs) between channel functional tests for the following groups of instruments: reactor protection systems instrumentation (TS 3.3.1), isolation actuation instrumentation (TS 3.3.2), emergency core cooling system actuation instrumentation (TS 3.3.3), ATWS (anticipated transient without scram) recirculation pump trip system instrumentation (TS 3.3.4.1), end-of-cycle recirculation pump trip system instrumentation (TS 3.3.4.2), reactor core isolation cooling system (RCIC) actuation instrumentation (TS 3.3.5), control rod block instrumentation (TS 3.3.6), radiation monitoring instrumentation (TS 3.3.7.1), and feedwater/main turbine trip system actuation instrumentation (TS 3.3.90); (2) change the required actions and AOTs for the instruments listed above to make requirements consistent with supporting analysis in General Electric topical reports and change additional actions required to prevent extended AOTs from resulting in extended loss of instrument function; (3) change the required actions and AOTs for the instruments listed above for instrumentation associated with the ADS (automatic depressurization system), recirculation pump trip, and pump suction lineup for HPCI (high pressure core injection) and RCIC; (4) change applicability requirements and required actions for the reactor vessel water level-low, level 3 function that isolates the RHR (residual heat removal) system shutdown cooling system so that the function is required to be operable in operational conditions 3, 4, and 5 to prevent inadvertent loss of reactor coolant via the RHR shutdown cooling system; (5) remove notes in Table 3.3.2-1, 3.3.2-2, and 4.3.1-1 related to maintenance on leak detection temperature detectors and remove the note to TS 3.3.6 for Unit 1 related to a previous relief from TS 3.0.4; and reformat, renumber, and/or reword existing requirements to incorporate the changes listed above.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

I. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes increase the AOTs and STIs for actuation instrumentation intended to detect or mitigate accidents; establish required actions consistent with NUREG-1433 for some instruments that are more specific but equivalent to existing required actions; establish new requirements to prevent inadvertent loss of reactor coolant via the RHR Shutdown Cooling System during OPERATIONAL CONDITIONS 3, 4 and 5; and, eliminate notes that were intended to provide one time only exemptions from certain requirements. The proposed changes affect only those Technical Specification requirements that govern operability, required actions and routine testing of plant instruments that detect or mitigate accidents. The proposed changes do

not affect any equipment or requirements that are assumed to be initiators of any analyzed events. Therefore, the proposed changes will not involve an increase in the probability of occurrence of an accident previously evaluated.

The proposed changes will not increase the consequences of an accident previously evaluated because the changes will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested or inspected. The proposed changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients by the plant safety analysis or licensing basis. The proposed changes extend the intervals between required performances of routine instrument testing. The proposed changes also modify time limits allowed for operation with inoperable instrument channels in situations when an inoperable instrument channel would not prevent actuation of the associated equipment. These changes are based on the demonstrated reliability of these instruments and are justified by the analysis in References 1 through 8 [See February 10, 1995 application]. The small increases in the probability that the proposed changes will result in an equipment actuation failure has been determined in References 1 through 8 [See February 10, 1995 application] to be offset by safety benefits such as a reduction in the number of inadvertent actuations, a reduction in wear due to excessive testing, and better utilization of plant personnel and resources. These changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function.

Proposed changes to required actions and completion times for instrumentation associated with the ADS initiation, Recirculation Pump Trip, and pump suction lineup for HPCI and RCIC make the required actions and completion times consistent with NUREG-1433, Standard Technical Specifications for General Electric Plants, BWR/4, Revision 0 (Reference 12). These changes are also consistent with the assumptions used in References 1 through 8 [See February 10, 1995 application]. Therefore, these changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In addition, the proposed change provides the benefit of avoiding an unnecessary shutdown transient when appropriate measures are available to compensate for the inoperable instrumentation. Therefore, the proposed changes will not increase the consequences of an accident previously evaluated.

There is no significant increase in the probability or consequences of an accident previously evaluated resulting from changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above or from the removal of notes that were intended for one time only use and are no longer applicable.

II. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change will not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. The changes in normal plant operation are consistent with the current safety analysis assumptions. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

III. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed TS changes: increase the AOTs and STIs for actuation instrumentation intended to detect or mitigate accidents; establish required actions consistent with NUREG-1433 for some instruments that are more specific but equivalent to existing required actions; establish new requirements to prevent inadvertent loss of reactor coolant via the RHR Shutdown Cooling System during Operational Conditions 3, 4 and 5; and, eliminate notes that were intended to provide one time only exemptions from certain requirements.

There is no significant reduction in the margin of safety resulting from changes to the minimum surveillance test intervals (STIs) and allowable out-of-service times (AOTs) for the testing and/or repair of instrumentation. This conclusion is based on the demonstrated reliability of these instruments and is justified by the analysis in References 1 through 8 [See February 10 1995 application]. The small increases in the probability that the proposed changes will result in an equipment actuation failure has been determined in References 1 through 8 [See February 10, 1995 application] to be offset by safety benefits such as a reduction in the number of inadvertent actuations, a reduction in wear due to excessive testing.

These changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function.

There is no significant reduction in the margin of safety resulting from changes to required actions and completion times for instrumentation associated with the ADS initiation, Recirculation Pump Trip, and pump suction lineup for HPCI and RCIC. These changes make the required actions and completion times consistent with NUREG-1433, Standard Technical Specifications for General Electric Plants, BWR/4. These changes are also consistent with the assumptions used in References 1 through 8 [See February 10, 1995 application]. Therefore, these changes establish or maintain adequate assurance that components are operable when necessary for the prevention or mitigation of accidents or transients and that plant variables are maintained within limits necessary to satisfy the assumptions for initial conditions in the safety analysis. In addition, the proposed change provides the benefit of avoiding an unnecessary shutdown transient when appropriate measures are available to compensate for the inoperable instrumentation. Additionally, the proposed required actions ensure that actions to mitigate loss of single failure tolerance are initiated within 24 hours (12 hours for RPS) in accordance with the results of the analyses in References 1 through 8 [See February 10, 1995 application] and action to mitigate a loss of instrument function is initiated within 1 hour. Therefore, these changes will not allow continuous plant operation with plant conditions such that a single failure will result in a loss of any safety function. The Pennsylvania Power & Light Company performed reviews that confirmed the analyses in References 1 through 8 [See February 10, 1995 application] are applicable to SSES and that there would be no effect on the identification of excessive instrument setpoint drift as a result of increasing the minimum interval between instrument functional tests from monthly to quarterly.

There is no significant reduction in the margin of safety resulting from changes that reformat, renumber, and/or reword existing requirements to incorporate the changes above or from the removal of notes that were intended for one time only use and are no longer applicable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

*NRC Project Director:* John F. Stolz

**Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Units Nos. 2 and 3, York County, Pennsylvania**

*Date of application for amendments:* January 13, 1995

*Description of amendment request:* The proposed changes concern a revision to the frequency of calibration for the Local Power Range Monitor (LPRM) signals from every 6 weeks to every 2000 Megawatt Days per Standard Ton (MWD/ST).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability of consequences of an accident previously evaluated.

This change does not affect the operation of any equipment. The change does not affect the fundamental method by which the LPRMs are calibrated. The increased time between required LPRM calibrations does not affect either the initiator of any accident previously evaluated or any equipment required to mitigate the consequences of an accident, or the isotopic inventory in the fuel. Thus, the change does not increase either the probability or the radiological consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not introduce a new mode of plant operation and does not involve the installation of any new equipment or modifications to the plant. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The GETAB determination of the Maximum Critical Power Ratio (MCPR) Safety Limit allows a maximum total nodal uncertainty of the TIP readings (of which the LPRM Update uncertainty is a part) of 8.7%. The change in LPRM calibration frequency results in an LPRM Update uncertainty of 4.2% nodal power. This, combined with the other uncertainties which comprise the total TIP readings uncertainty, yields a total TIP readings uncertainty of less than the allowed 8.7%. Thus the change in LPRM calibration frequency will not affect the MCPR Safety Limit.

The LPRMs are utilized as input to the APRM and RBM systems. The primary safety function of the APRM system is to initiate a scram during core-wide neutron flux transients before the actual core-wide neutron flux level exceeds the safety analysis design basis. This prevents fuel damage from single operator errors or equipment malfunctions. The APRMs are calibrated at least twice per week to the plant heat balance, utilize a radially and axially diverse group of LPRMs as input and are utilized to detect changes in average, not local, power changes. Therefore, the effects of decreasing the LPRM calibration frequency on the APRM system responses will be minimal due to any individual LPRM drift being practically canceled out (due to diversity of input) and/or due to the frequent recalibration of the APRMs to an independent power calculation (the heat balance). Thus, decreasing the LPRM calibration frequency will not significantly impact the performance of the APRM system's scram function, and there is no impact on transient delta-CPRs.

The RBM system is utilized in the mitigation of a Rod Withdrawal Error (RWE). The RBM system is designed to prevent the operator from increasing the local power significantly when withdrawing a control rod. On each selection of a control rod, the average of the assigned, unbypassed LPRMs is adjusted to equal a 100% reference signal for each of the two RBM channels. Each RBM channel automatically limits the local thermal margin changes by limiting the allowable change in local average neutron flux to the RBM setpoint. If the local average neutron flux change is greater than that allowed by the RBM setpoint, within either RBM channel, the rod withdrawal permissive is removed preventing further movement. Since the change in local neutron flux is calculated from the change in the average of the LPRM readings, and calibrated on every rod selection to the reference signal, offsets in individual LPRM readings due to calibration differences are effectively eliminated for a given RBM setpoint. Therefore, the constraints on the withdrawal of any given rod are unchanged and there will not be any increase in RWE delta-CPR.

Since the MCPR Safety Limit is unaffected and the delta-CPR values are unchanged, the cycle CPR limits are unchanged. Therefore, the change in the frequency of LPRM calibration does not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

*Attorney for licensee:* J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

*NRC Project Director:* John F. Stolz

**Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* February 23, 1995

*Description of amendment request:* The proposed amendment would change the minimum emergency diesel generator (EDG) fuel oil requirements of Technical Specifications Section 3.7 (Auxiliary Electrical Systems) from 7056 to 6721 gallons. The change is requested based on a recent modification which installed a more accurate level indicator for each of the three fuel oil tanks. The new indicators have an accuracy of plus or minus 50 gallons while the old indicators had an accuracy of plus or minus 385 gallons. Thus, the actual volume of fuel oil available to each of the EDGs remains unchanged at 6671 gallons.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed. This amendment application is the result of a modification which installed new fuel oil level indicators [for each of the three EDG fuel oil tanks]. These new indicators reduce the amount of measurement uncertainty by 335 gallons. The proposed reduction in minimum fuel oil corresponds to this reduction in uncertainty and therefore does not affect the amount of fuel oil available for use in the EDG storage tanks. This ensures that sufficient oil is present to power the minimum safeguards equipment for 48 hours, assuming two EDGs are operable.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not affect the way the plant operates. This amendment application is the result of a modification which installed new fuel oil level indicators which have a higher accuracy than the previous ones. The requested change in the minimum required fuel oil volume corresponds to this reduction in measurement uncertainty. Therefore, there is no affect on the amount of oil available for use by the EDGs.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. This amendment application is the result of a modification which installed new fuel oil level indicators. These new indicators reduce the amount of measurement uncertainty by 335 gallons. The proposed reduction in minimum fuel oil corresponds to this reduction in uncertainty and therefore does not affect the amount of fuel oil available for use in the EDG storage tanks. This ensures that sufficient oil is present to power the minimum safeguards equipment for 48 hours, assuming two EDGs are operable.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request

involves no significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Power Authority of The State of New York, Docket No. 50-286, Indian PointNuclear Generating Unit No. 3, Westchester County, New York**

*Date of amendment request:* March 2, 1995

*Description of amendment request:* The proposed amendment would change the titles of several management positions as described in Technical Specifications Section 6.0 (Administrative Controls). Specifically, the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer would be changed to Shift Manager and Chief Nuclear Officer, respectively. In addition, the position titles of Senior Reactor Operator (SRO) and Reactor Operator (RO) would be deleted and replaced with qualification requirements.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes eliminate the position titles of SRO and RO and replace them with required qualifications. These changes do not alter the function or criterion necessary to fulfill the minimum shift crew requirements listed in Technical Specification Table 6.2-1. The position title changes for the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer are administrative in nature.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they are administrative in nature. The changes do not affect plant equipment or operation. They allow the Authority [the licensee] to replace the position title of SRO with Control Room Supervisor. This change signifies the switchover of this position from union to management, but does not alter the position's functions or license requirements. The Authority is not planning a title change for the RO, but is rewording the Technical Specifications concerning this position for consistency. The change in position titles from the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer to Shift Manager and Chief Nuclear Officer, respectively, are administrative changes.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes eliminate the position titles of SRO and RO and replace them with required qualifications. These changes do not alter the function or criterion necessary to fulfill the minimum shift crew requirements listed in Technical Specification Table 6.2-1. The position title changes for the Shift Supervisor and the Executive Vice President and Chief Nuclear Officer are administrative as they do not alter the qualifications necessary to fill these positions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

*Attorney for licensee:* Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

*NRC Project Director:* Ledyard B. Marsh

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* August 30, 1994

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TS) to remove the specifications associated with the Loose-Part Detection System (LPDS). Specifically, TS 3.3.7.9, ''Loose-Part Detection System,'' Surveillance Requirement 4.3.7.9, associated Bases and the index would be revised to indicate that the LPDS has been removed. The LPDS will subsequently be relocated to the Updated Final Safety Analysis Report (UFSAR).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes relocate the Loose Parts Detection System (LPDS) from the Technical Specifications (TS) to the UFSAR. Subsequent changes to LPDS requirements would require a review, in accordance with the provisions of 10CFR50.59 to determine if an unreviewed safety question exists.

Relocation of the LPDS is consistent with the NRC Final Policy Statement on TS improvements. In part, the Final Policy Statement provides screening [criteria] to evaluate TS requirements for the purpose of relocation to other licensee controlled documents. Limiting Conditions for Operation (LCOs) which do not meet any of the Final Policy Statement [criteria] may be proposed for relocation. The LPDS does not satisfy any of the Final Policy Statement screening [criteria].

The proposed changes do not affect any material conditions of the plant that could directly contribute to causing or mitigating the effects of an accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any changes to plant structures, systems or components. Also, the proposed changes were compared to the [criteria] presented in the Final Policy Statement. The proposed changes do not meet any of the screening [criteria] presented in the Final Policy Statement and, therefore, may be proposed for relocation from the TS.

Upon approval of the proposed changes, the LPDS will be relocated to the UFSAR. Subsequent changes to LPDS requirements would require a review, in accordance with the provisions of 10CFR50.59 to determine if an unreviewed safety question exists.

The relocation of the LPDS from the TS does not result in a significant increase of core damage frequency of offsite release. The LPDS is not modeled in the Hope Creek Probabilistic Risk Assessment.

These proposed changes do not affect equipment or its operation. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes do not involve a significant reduction in the margin of safety. These changes were compared against the screening [criteria] of the Final Policy Statement. The changes do not meet any of the Final Policy Statement screening [criteria] and, therefore, may be proposed for relocation from the TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* October 31, 1994

*Description of amendment request:* The amendment request proposes that certain valves be reclassified and deleted from Technical Specification (TS) Table 3.6.3-1 ''Primary Containment Isolation Valves.'' The valves are located on lines which serve closed, safety class 2 Engineered Safety Feature (ESF) systems. In addition to the subject valves, each of these lines are provided with an automatic Containment Isolation Valve (CIV) outside containment which remains subject to TS Table 3.6.3-1.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The valves, which will be deleted from TS Table 3.6.3-1, serve water-filled, Safety Class 2, seismic Category I ESF system lines. Safety Class 2, seismic Category I ESF system lines utilize other, automatic CIVs outside the Containment in addition to the valves subject to this amendment application. These other CIVs will continue to be listed in TS Table 3.6.3-1 and subject to the requirements specified in the Technical Specifications. In addition, the piping serving these ESF systems constitutes closed systems (i.e., extended Containment boundaries) outside Containment, as described in HCGS [Hope Creek Generating Station] UFSAR [Updated Final Safety Analysis Report] Section 6.2.4.3.5. The dual barriers provided by the CIVs and closed system piping outside the Containment satisfy the ''other defined basis'' requirements of GDC [General Design Criteria] 55 and 56, as clarified in RG [Regulatory Guide] 1.141 and the ANSI/ANS Standard referenced therein. These dual barriers prevent post-accident Containment leakage and provide protection against postulated single active and passive failures. Therefore, the post-accident integrity of the Containment can be assured following the removal of the subject valves from TS Table 3.6.3-1.

The elimination of the subject valves from the list of CIVs will not increase the potential for containment leakage due to the presence of the other CIVs and use of closed system piping. The proposed change does not affect the design, functions, and operation of these valves. The valves will remain fully operational and capable of performing all of their required system and safety-related functions. Other applicable requirements, pertaining either to the valves or the systems they serve which are imposed by Technical Specifications, are not affected by this amendment application.

Certain valves, which are Reactor Coolant System Pressure Isolation Valves, remain subject to Technical Specification 3/4.4.3.2. In addition, all of the valves included in this amendment application will continue to be inspected and tested per the applicable requirements of Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME XI) in accordance with Technical Specification 4.0.5.

The changes associated with this amendment application will not affect the overall leak-tight integrity of the Primary Reactor Containment, which will be demonstrated during 10CFR50 Appendix J Type A Integrated Leak Rate Testing as described in the Hope Creek Generating Station Updated Final Safety Analysis Report (HCGS UFSAR) Section 6.2.6.1. Radiological releases and their consequences due to leakage of the subject valves will be within the existing plant licensing basis.

The proposed change does not change the physical plant or the manner in which it is operated. The change eliminates unnecessary Appendix J testing requirements for certain valves while retaining those tests needed to assure required Containment isolation capabilities. The new bases for satisfying GDC 55 and 56 provide equivalent levels of protection against offsite radiation releases.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not involve any hardware or logic changes, nor does it alter the way in which any plant systems operate. Post-accident Containment isolation features, boundaries and system interfaces are not affected by the changes. The change eliminates unnecessary Appendix J tests for certain valves while retaining those tests needed to assure that the Containment isolation features perform as required. Therefore, there are no new possibilities or types of accidents considered.

3. Will not involve a significant reduction in a margin of safety.

The proposed elimination of certain valves from the list of isolation valves contained in Technical Specification Table 3.6.3-1 will not adversely affect the margins of safety associated with the plant's licensing bases.

The use of other CIVs outside Containment, which are subject to Type C testing with gas in accordance with the Technical Specifications, in conjunction with the closed system/extended Containment boundary piping, provides a redundant barrier against Containment leakage and provides protection against postulated single active and passive failures. The subject valves will be tested in accordance with the ASME B&PV Code Section XI - Division 1, Article IWV-3000, as required. 10CFR50 Appendix J, Type A testing will ensure that the overall Containment leakage rate is consistent with the plant's licensing bases. Existing Containment isolation features, boundaries and system interfaces are not affected by the change.

Since the valves and the systems they serve are located either in the Drywell or in the Reactor Building, any leakage (e.g., packing gland leakage) which escapes the confines of the closed system piping, will be contained within the Containment or in the Reactor Building. These areas are radiologically controlled and monitored. Any releases to the Reactor Building are processed by the Filtration, Recirculation, and Ventilation System. This assures that all radioactive releases to the environment are within the existing plant licensing bases.

The elimination of unnecessary Appendix J testing for certain valves will not affect the existing radiological release evaluations currently described in the HCGS-UFSAR.

The proposed Amendment will not affect the functional capability of any plant safety-related structures, systems or components.

In addition, the implementation of the proposed Amendment will result in a reduction of radiological exposure to plant personnel. Therefore, the proposed revision will not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

*Attorney for licensee:* M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey**

*Date of amendment request:* November 30, 1994

*Description of amendment request:* The proposed amendment would revise the Technical Specifications for Hope Creek Generating Station by relocating the tables of response time limits for the Reactor Protection System (RPS), the Isolation System, and the Emergency Core Cooling system (ECCS) instrumentation from the Technical Specifications to the Updated Final

Safety Analysis Report (UFSAR). This proposed amendment is a ''line-item'' technical specification improvement and follows the guidance of Generic Letter 93-08, ''Relocation of Technical Specification Tables of Instrument Response Time Limits''.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Reactor Protection System (RPS), the Isolation System, and the Emergency Core Cooling System (ECCS) instrumentation are used to mitigate the consequences of accidents and provide the necessary signals to actuate the safety equipment needed to mitigate accidents and transients. The proposed changes relocate the RPS, the Isolation System, and the ECCS instrument response times from the Technical Specifications to the Updated Final Safety Analysis Report (UFSAR) but will not change the operability or surveillance requirements for these instruments. With these proposed changes, revisions to the response times for these instruments can be made pursuant to 10CFR50.59. The proposed changes will not alter any accident initiators or the consequences of any analyzed accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes relocate the RPS, the Isolation System, and the ECCS instrumentation response time limits from the Technical Specifications to the UFSAR but does not change the function of those instruments. The proposed changes do not represent a change in the configuration or operation of the plant. No new hardware is being added to the plant as part of the proposed changes. The Technical Specifications will continue to require the same operability and surveillance requirements to be met for these instruments. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes will not affect the functions of the RPS, the Isolation System, or the ECCS instruments. Relocating the response time limits will not alter the operability or the surveillance requirements on these instruments. The administrative change control provisions for the UFSAR and the plant procedures written pursuant to 10CFR50.59 are adequate to control future revisions to the response time limits. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

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*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* December 9, 1994

*Description of amendment request:* The proposed amendments would make three changes to the Surveillance Requirements for the hydrogen recombiners: (1) eliminate the 6-month functional test; (2) remove the requirement to maintain the hydrogen recombiner heater sheath temperature at or above 1200 degrees Fahrenheit for at least 4 hours; and (3) remove the note that addresses the 6-month functional test.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The hydrogen recombiners (HRs) are designed to limit post accident hydrogen accumulation inside containment and can have no affect on the probability of any accident previously evaluated.

The proposed HR Surveillance Requirement (SR) revisions would continue to demonstrate the ability of the HRs to perform their safety function. The proposed changes are consistent with the intent of NUREG-1366 and Generic Letter 93-05 in that at powertesting will be reduced and subsequent testing will be performed at least once per 18 months. In accordance with the provisions of Generic Letter 93-05, the proposed changes were reviewed to assess compatibility with plant operating experience. A review of the last 5 years of HR operating history indicates no adverse conditions which would preclude removal of the 6 month functional test.

In regard to the specific testing conducted, the proposed changes retain the 18 month functional heatup test, as revised. This is different than the recommendations of NUREG-1366 and Generic Letter 93-05 which extend the 6 month functional test to at least once each refueling interval. However, the 18 month functional heatup test provides a more meaningful demonstration of operability, and on this basis, was chosen to be retained.

The proposed changes revise the 18 month functional heatup test so that HR heater sheath temperatures are no longer required to be maintained [greater than or equal to] 1200°F for at least 4 hours. The requirement to increase HR heater sheath temperature to [greater than or equal to] 1200°F within 5 hours is not affected and has been retained. A review of HR 18 month functional heatup tests over the last 6 years indicates demonstrated capability of the HR to maintain heater sheath temperatures [greater than or equal to] 1200°F for 4 hours. Removal of this requirement would reduce the potential for component degradation while increasing reliability.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes would only affect the SRs of the HRs. The proposed changes would not allow operation in any configuration prohibited by the present Technical Specifications. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The proposed changes will not reduce the ability of the HRs to perform their safety function. The basis for NUREG-1366 and Generic Letter 93-05 is that plant safety can be improved, equipment degradation decreased and personnel burden decreased by reducing the amount of testing at power. The proposed changes do this by eliminating the 6 month HR functional test and making the revised 18 month functional heatup test the exclusive system functional test for the HRs.

The proposed changes also revise the 18 month HR functional heatup test. The 18 month functional heatup test provides a more meaningful demonstration of system operability, and on this basis, was chosen to be retained. In addition, these changes would reduce the potential for component degradation while increasing reliability.

Therefore, the proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston and

Strawn, 1400 L Street, NW, Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey**

*Date of amendment request:* February 9, 1995

*Description of amendment request:* The proposed amendments would revise the Technical Specifications to reflect organizational changes and resultant management title changes.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

**1. Will not involve a significant increase in the probability or consequences of an accident previously evaluated.**

The proposed management title changes from Vice President and Chief Nuclear Officer to Chief Nuclear Officer and President - Nuclear Business Unit or Vice President - Nuclear Operations, and from General Manager - Quality Assurance and Nuclear Safety to Director - Quality Assurance and Nuclear Safety Review, and the proposed change to eliminate the Radiation Protection/ Chemistry Manager and establish the Radiation Protection Manager and Chemistry Manager, are administrative in nature and do not affect assumptions contained in the plant safety analysis, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are purely administrative and will not lead to material procedure changes or to physical modifications. Therefore, the proposed changes do not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Will not involve a significant reduction in a margin of safety.

The changes being proposed are administrative in nature and do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. The changes discussed herein do not reduce the Technical Specification safety margin since all organizational responsibilities are being adequately implemented, and all personnel in place are properly qualified. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

*Attorney for licensee:* Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005-3502

*NRC Project Director:* John F. Stolz

**Sacramento Municipal Utility District (SMUD), Docket No. 50-312, Rancho Seco Nuclear Station, Sacramento County, California**

*Date of amendment request:* February 28, 1995

*Description of amendment request:* The proposed amendment (PA-188) would permit SMUD to change the audit frequencies contained in the Rancho Seco Quality Manual (RSQM) in accordance with 10 CFR 50.59 and 10 CFR 50.54(a)(3) without first requiring a license amendment. This proposed amendment would not change the type or description of the audits required in the Permanently Defueled Technical Specifications (PDTS). In addition, the reporting frequency of the Radioactive Effluent Release Report would be changed from semi-annual to annual as permitted by 10 CFR 50.36a(a)(2).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has reviewed the proposed changes against each of the no significant hazards consideration criteria in 10 CFR 50.92, and, based on their safety analysis, concludes:

A significant increase in the probability or consequences of an accident previously evaluated will not be created because the proposed PDTS changes (1) comply with Radioactive Effluent Release Report reporting frequency specified in 10 CFR 50.36a(a)(2), (2) only relocate the frequencies for the PDTS D6.5.4 required audits to the RSQM, (3) ensure any future District initiated changes to RSQM audit frequencies meet the administrative and regulatory review requirements specified in 10 CFR 50.54(a), and (4) have no affect on any credible accidents previously evaluated in the Rancho Seco Defueled Safety Analysis Report (DSAR) for Rancho Seco in the permanently defueled mode (PDM); i.e., the dropped fuel assembly accident, the loss of off-site power condition, or a radwaste tank rupture.

PA-188 will not create the possibility of a new or different type of accident than previously evaluated in the SAR, because the proposed PDTS changes (1) do not modify the configuration of the facility or its mode of operation, (2) are in compliance with 10 CFR 50.36a(a)(2), (3) only relocate the audit frequencies to the RSQM, (4) require any future RSQM audit frequency changes to conform to the administrative and regulatory controls contained in 10 CFR 50.54(a), and (5) do not provide any new mechanisms by which an accident can occur.

The proposed PDTS amendment will not involve a significant reduction in the margin of safety because the District will continue to maintain a quality assurance program, in accordance with 10 CFR 50, Appendix B, and will continue to perform shutdown activities in a safe manner. The District's quality assurance program will continue to (1) meet the applicable 10 CFR 50 requirements during the PDM and (2) have the ability to determine if plant operations during the PDM are performed without undue risk to the health and safety of the public. Also, the proposed change does not affect the operation of Rancho Seco or any plant systems. Therefore, the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Central Library, Government Documents 828 I Street, Sacramento, CA 95814

*Attorney for licensee:* Dana Appling, Esq., Sacramento Municipal Utility District, P. O. Box 15830, Sacramento, CA 95852-1830

*NRC Project Director:* Seymour H. Weiss

**South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of amendment request:* February 21, 1995

*Description of amendment request:* The proposed amendment changes the Technical Specifications (TS) to incorporate the model TS changes of the Draft Generic Letter (GL), ''Guidance for Modification of Technical Specifications to Reflect (A) Revisions to 10 CFR Part 20 'Standards for Protection Against Radiation' and 10 CFR 50.36a, —Technical Specifications on Effluents from Nuclear Power Reactors,— (B) related Current Industry Initiatives, and (C) Miscellaneous Related Editorial Clarifications.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated does not involve a significant increase.

The proposed TS changes showing the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures.

The proposed revision to the liquid and gaseous release rate limits will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the method of (algorithm) determining release rate limits and will not change net limits or change the more restrictive 10 CFR 50 Appendix I dose limits.

The proposed revision to the radioactive material quantity in the settling pond will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. This is only a change to the method of (algorithm) determining the quantity of radioactive material in the settling pond and will not change net limits.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative occupational radiation exposures. The curie limit is not affected, therefore, the change does not represent a decrease in the level of control previously evaluated.

The proposed revision to the distance at which dose rates are measured from the radiation source or surface will not involve a significant increase in the probability or consequences of an accident previously evaluated because there will be no increase in the individual or cumulative occupational radiation exposures. The change in distance is conservative in its effect on worker protection and is in conformance with 10 CFR 20.1601 requirements.

2.The possibility of a new or different kind of accident from any previously evaluated is not created.

The proposed TS changes showing the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302, relocation of the old 10 CFR 20.203(c)(2) requirements to the new 10 CFR 20.1601(a), and relocation of the old 10 CFR 20.407 requirements to the new 10 CFR 20.2206(b) will not create the possibility of a new or different kind of accident from any previously evaluated because the revisions are administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the liquid and gaseous release rate limits will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the quantity of radioactive material in the settling pond will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not create the possibility of a new or different kind of accident from any previously evaluated because the revision is administrative and will not change the types and amounts of effluents that will be released.

Implementation of the more conservative distance at which dose rates are measured will not create the possibility of a new or different kind of accident from any previously evaluated.

3. A significant reduction in a margin of safety is not involved.

The proposed revisions due to the location of requirements will not reduce a margin of safety because they are administrative in nature. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The proposed revision to liquid and gaseous release rate limits will not reduce a margin of safety because it is administrative in nature. These revisions preserve the existing level of effluent control. No changes to the more restrictive 10 CFR 50 Appendix I dose limits are made. There are no equipment or operational procedure changes, therefore, no accidents of any kind will be created by this change.

The proposed revision to the quantity of radioactive material in the settling pond will not reduce a margin of safety because it is administrative in nature and preserve[s] the existing level of effluent control. There are no equipment or operational procedure changes, therefore, no accidents of any kind will be created by this change.

The proposed revision to the TS bases for the Liquid Holdup Tank activity limit will not reduce a margin of safety because it is administrative in nature and preserve[s] the existing level of effluent control. No equipment or procedural changes are postulated. There is no impact on any margin of safety.

The change in distance for a High Radiation Area classification from 18 in. (45 cm) to (30 cm) 12 in. from the radiation source or surface will not reduce the margin of safety because this change will reduce the worker's stay time in the area and therefore minimize exposure.

Accordingly, this proposed change does not involve a significant hazard.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

*NRC Project Director:* William H. Bateman

**South Carolina Electric & Gas Company, South Carolina Public ServiceAuthority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina**

*Date of amendment request:* March 6, 1995

*Description of amendment request:* The proposed amendment would discontinue the seismic monitoring network around the Virgil C. Summer Nuclear Station on the basis that the minimum requirements of License Condition (LC) 2.C(24) have been satisfied.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since the seismic monitoring network provides no direct input for operator action to control the plant. This network only functions to provide an estimate of the magnitude and location of an earthquake.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the seismic monitoring network serves to record an earthquake with no direct input for operator action. Removal of the network will have no affect on the design or operation of the plant.

3. The proposed amendment does not involve a significant reduction in the margin of safety since the microseismic network does not control any safety functions of the plant nor provide any annunciation for operator action to control the plant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

*Attorney for licensee:* Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

*NRC Project Director:* William H. Bateman

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, BrownsFerry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama**

*Date of amendment request:* November 15, 1994; superseded March 7, 1995 (TS 350)

*Description of amendment request:* The proposed change would remove the frequency for each of the audits specified in the administrative controls section of the technical specifications (TS), except those related to the fire protection system. The requirements to perform the audits would be retained, but the frequency for their performance would be controlled by a requirement to be added to the Nuclear Quality Assurance Plan. This would require that the audits listed in the TS (except those related to the fire protection system) be performed on a biennial frequency. In addition, the proposed change would remove the requirement to perform site Radiological Emergency Plan, Physical Security Plan, and the Safeguard Contingency Plan reviews and audits from the TS, since these requirements presently exist in their respective Plans.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA [the Tennessee Valley Authority] has concluded that operation of [the Browns Ferry Nuclear Plant] BFN Units 1, 2, and 3 in accordance with the proposed change to the technical specifications does not involve a significant hazards consideration. TVA's conclusion is based on its evaluation in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c). TVA's conclusion is based on the following:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by this Technical Specification change which only affects review and audit frequencies. This Technical Specification change will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed change. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the UFSAR [Updated Final Safety Analysis Report] are not increased by this change.

The proposed change only affects review and audit frequencies. As such, the proposed change has no impact on accident initiators or plant equipment, and thus, does not affect the probabilities or consequences of an accident.

Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, a change related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change concerning conduct of reviews and audits does not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Athens Public Library, South Street, Athens, Alabama 35611

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET llH, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* March 19, 1994; superseded May 16, 1994; superseded February 10, 1995; supplemented February 17, 1995 (TS 93-04)

*Description of amendment request:* The proposed change would clarify the technical specifications (TS) regarding the dual function of the containment vacuum relief system (i.e., vacuum relief and containment isolation). A proposed change to TS 3/4.6.3, ''Containment Isolation Valves,'' would indicate that the existing Action statements refer to the valves listed in Sections A, B, C and D.4 of Table 3.6-2. An Action statement would be added to indicate the actions that would be required should one or more vacuum relief isolation valve(s) shown in Table 3.6-2, Section D.1 through D.3 become inoperable. The required action would be to return the valve(s) to the operable status within 72 hours or be in at least hot standby within the next 6 hours and in cold shutdown within the following 30 hours. Proposed changes to TS 3/4.6.6, ''Vacuum Relief Valves,'' would: (1) change the terminology from vacuum relief ''valve'' to ''line;'' (2) change the Limiting Condition for Operation to indicate that all three primary containment vacuum relief lines shall be operable; (3) add a footnote that references Limiting Condition for Operation 3.6.3 in the event that one or more of the vacuum relief valves are incapable of performing a containment isolation function; and (4) change the allowed outage time for restoring an inoperable vacuum relief line from 4 hours to 72 hours. Other proposed changes affect Bases 3/4.6.6 section and TS index pages to reflect the proposed changes indicated above. Proposed changes to Table 3.6-2 would remove double asterisks (**) from various valves and remove the referenced note that states: ''This valve is required after completion of the associated modification.'' The proposed changes were originally noticed on May 12, 1993 (58 FR 28060), which was superseded by the notice published on June 22, 1994 (59 FR 32237).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed TS change does not affect any system functions or design functions. The proposed change addresses the acceptability of SQN's vacuum relief valves for containment isolation protection, and

utilizing these normally closed valves for TS-required isolation in the event the associated air-operated butterfly isolation valve(s) is incapable of automatic closure. This approach remains consistent with the vacuum relief valve's containment isolation design function.

SQN's vacuum relief valves (spring-loaded, swing-disk check valves) are designed to provide a qualified containment boundary to limit leakage of airborne fission products from the containment atmosphere during normal operation and during an analyzed pressurization event inside containment. Each valve is leak tested in accordance with 10 CFR 50, Appendix J (Type C test), to ensure that the leakage rate from the valve (when combined with the leakage rate from all other Types B and C containment penetrations) remains within the maximum allowable leakage rate of 0.60 La. The containment leak rate assumed in the worst-case design basis accident analysis (loss-of-coolant accident [LOCA]) bounds the 0.60 La leakage limit.

The vacuum relief valves are normally closed valves and are held closed by a spring force during normal plant operation. The valves would experience additional closing force during a pressurization event inside containment (e.g., LOCA). A review of the design basis events involving containment depressurization indicates that there are no postulated scenarios that would open the vacuum relief valves followed by a LOCA or other accident condition requiring containment isolation. This containment isolation function remains consistent with the SQN Final Safety Analysis Report Section 6.2.6, and the exemption to 10 CFR 50, General Design Criteria 56, provided in NUREG-1232.

A 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status ensures that redundant isolation capability is restored in a reasonable amount of time. SQN's vacuum relief valves are considered to be highly reliable as a containment isolation boundary. Accordingly, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The 72-hour allowed outage time for restoring the containment vacuum relief function is consistent with standard TS (STS) bases and does not increase the probability of consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

No physical modification is being made to any plant hardware, plant operating setpoints, limits, or operating procedures as a result of this change. TVA's proposed change provides a TS improvement that clarifies the configuration and function of SQN's vacuum relief valves as designed. The proposed change removes the potential for creating a conflict between Specification 3/4.6.3, ''Containment Isolation Valves,'' and Specification 3/4.6.6, ''Vacuum Relief Valves.'' SQN's vacuum relief valves provide qualified containment isolation protection that meets the intent of the TS action requirement for containment isolation.

The proposed change does not alter any accident analysis or any assumptions used to support the accident analyses. The containment leakage assumptions used to determine offsite dose limits for compliance with 10 CFR 100 are not affected.

A 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status ensures that redundant isolation capability is restored in a reasonable amount of time. SQN's vacuum relief valves are considered to be highly reliable as a containment isolation boundary. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

The 72-hour allowed outage time (AOT) for restoring the containment vacuum relief function is consistent with STS bases and does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The margin of safety provided by the design of SQN's containment vacuum relief lines remains unchanged. TVA's proposed change does not affect the containment isolation function or the allowable containment leakage rate values specified in the TSs. The proposed change ensures that the proper action is taken in the event the automatic closure capability of the containment vacuum relief isolation valve(s) is lost for any reason (improper action would be the isolation of a vacuum relief line that is required to be operable in accordance with TS 3/4.6.6).

The 72-hour timeframe for returning an inoperable vacuum relief isolation valve to operable status does not reduce the margin of safety because the containment isolation function is satisfied by qualified vacuum relief valves. The vacuum relief and containment isolation functions continue to be maintained under the proposed TS change. Accordingly, the proposed change does not involve a reduction in the margin of safety.

The 72-hour AOT for restoring the containment vacuum relief function is consistent with STS bases and does not reduce the margin of safety.

Staff review of other changes proposed by the licensee has concluded that they are administrative in nature and/or remove outdated requirements.

The NRC has reviewed the analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee**

*Date of amendment request:* November 15, 1994; superseded March 7, 1995 (TS 94-12)

*Description of amendment request:* The proposed change would remove the frequency for each of the audits specified in the administrative controls section of the technical specifications (TS), except those related to the fire protection system. The requirements to perform the audits would be retained, but the frequency for their performance would be controlled by a requirement to be added to the Nuclear Quality Assurance Plan. This would require that the audits listed in the TS (except those related to the fire protection system) be performed on a biennial frequency. In addition, the proposed change would remove the requirement to perform site Radiological Emergency Plan, Physical Security Plan, and the Safeguard Contingency Plan reviews and audits from the TS, since these requirements presently exist in their respective Plans.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The standards used to arrive at a determination that a Technical Specification change request involves no significant hazards consideration are included in the Commission's regulations, 10 CFR 50.92, which states that no significant hazards considerations are involved if the operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Each standard is addressed as follows:

1. Operation of the facility in accordance with the proposed technical specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The likelihood that an accident will occur is neither increased or decreased by the Technical Specification change which only affects review and audit frequencies. This Technical Specification change will not impact the function or method of operation of plant equipment. Thus, there is not a significant increase in the probability of a previously analyzed accident due to this change. No systems, equipment, or components are affected by the proposed changes. Thus, the consequences of a malfunction of equipment important to safety previously evaluated in the FSAR are not increased by this change.

The proposed change only affects review and audit frequencies. As such, the proposed change has no impact on accident initiators or plant equipment, and thus, does not affect the probabilities or consequences of an accident.

Therefore, we conclude that this change does not significantly increase the probabilities or consequences of an accident.

2. Operation of the facility in accordance with the proposed technical specifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations. Since program audits do not contribute to accident initiation, a change related to audit functions cannot produce a new accident scenario or produce a new type of equipment malfunction. Also, this change does not alter any existing accident scenarios. The proposed change does not affect equipment or its operation, and, thus, does not create the possibility of a new or different kind of accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident.

3. Operation of the facility in accordance with the proposed technical specifications would not involve a significant reduction in a margin of safety.

The proposed change concerning conduct of reviews and audits does not directly affect plant equipment or operation. Safety limits and limiting safety system settings are not affected by this proposed change.

Therefore, use of the proposed Technical Specification would not involve any reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

*NRC Project Director:* Frederick J. Hebdon

**Washington Public Power Supply System, Docket No. 50-397, Nuclear Project No. 2, Benton County, Washington**

*Date of amendment request:* January 14, 1992, as supplemented by letter dated February 10, 1995.

*Description of amendment request:* The proposed amendment would revise surveillance requirements associated with the reactor recirculation system jet pumps. The February 10, 1995, submittal provided clarifying information and requested additional revisions to provide consistency with the improved standard technical specifications (NUREG-1433 and NUREG-1434).This notice supplements the initial no significant hazards consideration determination which was published in the Federal Register on May 27, 1992 (57 FR 22272).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Change in permissible diffuser-to-lower plenum differential pressure of any individual jet pump from established two recirculation loop operation patterns: from 10% to 20%.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change increases the variance allowed in a surveillance acceptance criteria consistent with the recommendations of General Electric SIL-330 and NUREG/CR-3052. The jet pumps are not assumed to be an initiator of any analyzed event and are therefore not included in safety analysis assumptions described in FSAR Chapters 6.2.1 (Recirculation Line Rupture, Short Term Accident Response), 6.3 (Acceptance for ECCS Performance, Criterion 5), and 15.6.5, which defers to Sections 6.2 and 6.3 for analysis of piping breaks inside containment.

The jet pumps must, however, maintain structural integrity to ensure that any recirculation line break would still allow core flooding to 2/3 of the core height, i.e., the level of the jet pump inlet as described in FSAR Section 1.2.2. (Reactor Recirculation System). Adopting the recommendations, which ensure jet pump operability, will not affect the consequences of accident since the recommended acceptance criteria still provide adequate assurance of jet pump operability. This change will not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adopting the recommended acceptance criteria of 20% will not create the possibility of a new or different kind of accident. No new or different type of equipment will be installed. Therefore this change will not physically alter the plant. Nor is the surveillance method changed. Incorporation of the 20% acceptance criteria will conform to the General Electric recommendations provided to ensure operability and will therefore not adversely impact jet pump operability. Operation is consistent with the current safety analysis assumptions described in FSAR Chapters 6 and 15. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

Modification of acceptance criteria from 10% to 20% is considered a relaxation from existing requirements, however, the margin of safety is not significantly reduced because the proposed changes to the acceptance criteria will continue to verify jet pump operability. The change reflects the recommendations in SIL-330 and NUREG/CR-3052. The safety analysis assumptions are unchanged, therefore no safety margin is impacted. In addition, this change provides the benefit of potentially avoiding an unnecessary shutdown transient when the jet pumps are still capable of performing their safety function and well within accepted criteria for confirming operability.

Requested change to surveillance requirements regarding the 4 hour grace period and requested change to an LCO regarding 4.0.4 applicability.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not increase the probability or consequences of an accident. The jet pumps are not assumed to be an initiator of an analyzed event.

The first note allows time after the loop is placed in service to establish appropriate conditions for test performance. The surveillance can only be performed during jet pump operation, therefore, four hours is allowed to perform the surveillance after the loop is placed in service. This allows time to establish conditions appropriate for data collection and evaluation.

The second note states the surveillance is not required to be performed until 24 hours after greater than 25% RTP. The surveillance does not have to be performed at RTP less than 25% because during low flow conditions, jet pump noise approaches the threshold response of the associated flow instrumentation and precludes the collection of meaningful data. The 24 hours is an acceptable time to establish conditions appropriate to perform this surveillance. The proposed change provides confirmation of jet pump operability within a reasonable time after the jet pumps are required.

The four hour and 24 hour allowances are justified since, as described in Generic Letter 87-09, it is overly conservative to assume that systems or components are inoperable when a surveillance has not been performed because the vast majority of surveillances demonstrate systems or components are operable. Accordingly, surveillance modification will not increase the probability or consequences of accident.

In addition, there is no importance placed on the order of the notes; the surveillance is only required to be performed when all conditions specified in both notes are met.

Performance of the surveillance under the proposed conditions will provide a greater level of confidence that the jet pumps are operable. As a result, the consequences of an accident are not affected by this change, which simply designates time requirements for the verification of operability. This

change will not alter assumptions relative to the mitigation of an accident or transient event.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

These changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The surveillance requirement is being performed to confirm jet pump operability at the earliest opportunity after the jet pumps are required. No new or different type of equipment will be installed, therefore this change will not physically alter the plant. The changes in methods governing normal plant operation and testing are consistent with the current safety analysis assumptions described in FSAR Chapters 6 and 15.

Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety:

The margin of safety is not significantly reduced because the changes to the surveillance frequency will continue to provide the necessary assurance of jet pump operability. These changes effectively extend the initial performance of the surveillance requirement by 4 or 24 hours and provide the benefit of allowing the surveillances to be postponed until plant conditions exist which permit acquisition of meaningful data. The safety analysis assumption of operable jet pumps will be maintained, thus no safety margin is impacted.

Requested change to Technical Specification Surveillance 4.4.1.2.2.c discussion for diffuser and an editorial change to Technical Specification 3/4.8.3, ''Onsite Power Distribution Systems,'' correcting Technical Specification Surveillance 3.8.3.1.b.1 to provide nomenclature distribution panel.

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Changing the word ''difference'' to ''diffuser'' is a purely administrative change which corrects an error in Technical Specification surveillance 4.4.1.2.2.c. This does not have an impact on FSAR accident analysis.

The proposed change corrects 3.8.3.1.b.1 to provide nomenclature clarification. This is a purely administrative change which corrects an error in the Technical Specification. There is no impact on FSAR accident analysis.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed editorial changes are purely administrative changes which correct errors in the Technical Specification. No new or different type of equipment will be installed, therefore these changes will not physically alter the plant. The safety analysis assumptions are unchanged.

Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed editorial changes do not modify safety analysis assumptions, therefore no safety margin is impacted.

Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Richland Public Library, 955 Northgate Street, Richland, Washington 99352

*Attorney for licensee:* M. H. Philips, Jr., Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

*NRC Project Director:* Theodore R. Quay

**Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

**Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas**

*Date of amendment request:* February 28, 1995

*Description of amendment request:* The amendments would modify Technical Specification (TS) 3/4.6.2, ''Depressurization and Cooling Systems - Containment Spray system'' Surveillance Requirement (SR) 4.6.2.1b, with NUREG-1431 SR 3.6.6A.4. This change replaces the specific pump flow and head values now contained in the SR with the general requirement that the pump develop the required head at the flow test point. Also, Bases 3/4.6.2.1, ''Containment Spray System'', will be revised to expand the detail consistent with the NUREG-1431 Bases SR 3.6.6A.4. The Bases from NUREG-1431 has minor modifications to reflect (1) that the containment spray pumps are tested via a special test line which allows testing at flows higher than that allowed by the miniflow recirculation line; (2) the ''pump design curve'' is termed the ''analytical pump curve≥; and (3) the reference to the technical requirements manual where the pump head requirements are defined is provided for the user's information.

*Date of individual notice in the* **Federal Register:** March 6, 1995 (60 FR 12255)

*Expiration date of individual notice:* April 5, 1995

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019

**Notice Of Issuance Of Amendments To Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment

under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are 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 rooms for the particular facilities involved.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of application for amendments:* August 2, 1994

*Brief description of amendments:* These amendments revise the Technical Specifications regarding the emergency diesel generators (EDGs) by modifying the surveillance requirements to include verification that the EDG high crankcase pressure trip is bypassed when a Safety Injection Actuation Signal is present. A footnote is also included which indicates that the verification of the high crankcase pressure trip bypass is not required on a particular EDG until the modification implementing the bypass has been completed for the EDG. The footnote further indicates that the modifications are to be completed by February 28, 1996.

*Date of issuance:* March 3, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 203 and 181

*Facility Operating License No.* DPR-53 and DPR-69: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 14, 1994 (59 FR 47165) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Calvert County Library, Prince Frederick, Maryland 20678.

**Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland**

*Date of application for amendments:* December 8, 1993, as supplemented on March 2, 1995.

*Brief description of amendments:* The amendments revise Section 5.0, Design Features. The revisions are generally consistent with the format and content of the improved Standard TSs for Combustion Engineering plants provided in NUREG-1432. The two subsections, for which the request to delete has been withdrawn, have been reformatted to be consistent with NUREG-1432 and are included in the enclosed amendments.

*Date of issuance:* March 14, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* Unit 1 - 204 - Unit 2 - 182

*Facility Operating License Nos.* DPR-53 and DPR-69: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 19, 1994 (59 FR 2861) The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated March 14, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station,Plymouth County, Massachusetts

*Date of application for amendment:* November 22, 1994

*Brief description of amendment:* The amendment revises the mode conditions under which the Scram Discharge Instrument Volume - Scram Trip Bypass in Table 3.2.C.1 is required to be operable and changes the associated functional test frequency from quarterly to once per operating cycle in Table 3.2.C.

*Date of issuance:* March 8, 1995

*Effective date:* March 8, 1995

*Amendment No.:* 159

*Facility Operating License No.* DPR-35: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 18, 1995 (60 FR 3671) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:* Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South CarolinaDate of application for amendment: July 29, 1994, as supplemented January 29, 1995**

*Brief description of amendment:* The amendment is to reduce the frequency of testing an operable EDG when the other EDG is inoperable and also to prevent entry into TS Section 3.0.

*Date of issuance:* March 3, 1995

*Effective date:* March 3, 1995

*Amendment No.:* 158

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 31, 1994 (59 FR 45018) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

**Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson SteamElectric Plant, Unit No. 2, Darlington County, South Carolina**

*Date of application for amendment:* December 27, 1994

*Brief description of amendment:* The amendment relocates the turbine rotor inspection requirement, TS 4.1-3, Item 13, to the Updated Final Safety Analysis Report, Section 10.2.

*Date of issuance:* March 17, 1995

*Effective date:* March 17, 1995

*Amendment No.:* 159

*Facility Operating License No.* DPR-23. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6298) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550

**Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina**

*Date of application for amendment:* December 19, 1994

*Brief description of amendment:* The amendment will provide a one-time schedular extension for a Technical Specifications surveillance interval from 40 months plus or minus 10 months to approximately 54 months to allow the third Type A test to be performed during refueling outage 7.

*Date of issuance:* March 10, 1995

*Effective date:* March 10, 1995

*Amendment No.* 54

*Facility Operating License No.* NPF-63. Amendment revises the Technical Specifications

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6298) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

**Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, IllinoisDate of application for amendments: October 24, 1994**

*Brief description of amendments:* The amendments restructure the primary containment and primary containment leakage technical specifications to reduce the repetition of those requirements contained in NRC regulations such as Appendix J to 10 CFR Part 50. The amendments also support the licensee's requested exemptions from Appendix J requirements related to the scheduling of containment integrated leakage rate tests. The staff has addressed the licensee's requested exemptions separately from the issuance of these amendments. In addition to the restructuring and scheduling changes, the amendments incorporate the relocation of the list of primary containment isolation valves in accordance with Generic Letter 91-08 and a revision to the interval for functional testing of hydrogen recombiners in accordance with Generic Letter 93-05.

*Date of issuance:* March 16, 1995

*Effective date:* Immediately, to be implemented within 30 days.

*Amendment Nos.:* 102 and 87

*Facility Operating License Nos.* NPF-11 and NPF-18: The amendments revised the license and the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 4, 1995 (60 FR 498). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1995. No significant hazards consideration comments received: No

*Local Public Document Room location:*Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

**Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York**

*Date of application for amendment:* April 13, 1994, as supplemented on December 20, 1994, January 12, 1995, and January 31, 1995.

*Brief description of amendment:* The amendment would revise Technical Specifications Sections 3.1.F and 4.13 to allow the repair of steam generator tubes via the implementation of an F* criteria. This would allow tubes that are degraded in a location not affecting structural integrity of the tube to remain in service as an alternative to removal from service through the use of tube plugs. The requested changes related to tube sleeving will be addressed in a separate amendment.

*Date of issuance:* March 13, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 180

*Facility Operating License No.* DPR-26: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 25, 1994 (59 FR 27051) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South CarolinaDate of application for amendments: October 18, 1994, as supplemented February 7, 1995**

*Brief description of amendments:* The amendments revise the frequency for conducting the Catawba Unit 1 Integrated Leak Rate Test from a nominal frequency of once per 40 months to once per 60 months. The amendments also involves the granting of an exemption from the requirements of 10 CFR Part 50, Appendix J.

*Date of issuance:* March 9, 1995

*Effective date:* To be implemented within 30 days from the date of issuance

*Amendment Nos.:* 129 and 123

*Facility Operating License Nos.* NPF-35 and NPF-52: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 6, 1995 (60 FR 7073) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina**

*Date of application for amendments:* November 29, 1994 as supplemented by letters dated January 12, January 27, February 6, February 16 and March 13, 1995.

*Brief description of amendments:* The requested amendment revises, in part, Technical Specifications 4.4.5.2, 4.4.5.4, 4.4.5.5 and 3.4.8 for Catawba Unit 1, Cycle 9 operation to permit the use of a voltage-based steam generator tube repair criteria for defects confined within the thickness of the tube support plate.

*Date of issuance:* March 17, 1995

*Effective date:* To be implemented within 30 days from the date of issuance

*Amendment Nos.:* 130 and 124

*Facility Operating License Nos.* NPF-35 and NPF-52: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 9, 1995 (60 FR 7801) The February 6 and 16, and March 13, 1995, letters provided clarifying information that did not change the scope of the original Novemb, 1994, application and initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 17, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

**Entergy Operations, Inc., Docket No. 50-313, Arkansas Nuclear One,Unit No. 1, Pope County, Arkansas**

*Date of amendment request:* August 30, 1994, as supplemented by letter dated March 5, 1995.

*Brief description of amendment:* The amendment relocated refueling cycle specific parameters from the technical specifications to the core operating limits report per NRC Generic Letter 88-16. Additionally, the amendment adds a 24 hour limit on operations when only one reactor coolant pump is operating in each loop.

*Date of issuance:* March 16, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 178

*Facility Operating License No.* DPR-51. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 18, 1995 (60 FR 3672)

The additional information contained in the supplemental letter dated March 5, 1995, was clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room location:*Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

**Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida**

*Date of application for amendments:* October 27, 1994

*Brief description of amendments:* These administrative amendments correct editorial errors, remove deleted pages, clarify confusing statements and eliminate inconsistencies identified by the plant operations staff.

*Date of issuance:* March 15, 1995

*Effective date:* March 15, 1995

*Amendment Nos.:* 134 and 73

*Facility Operating License Nos.* DPR-67 and NPF-16: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 23, 1994 (59 FR 60379) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003.

**Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

*Date of amendment request:* January 14, 1994, as supplemented by letter dated November 10, 1994, and February 8, 1995.

*Brief description of amendment:* The amendment revised the River Bend Station, Unit 1 technical specifications to remove various component lists from the technical specifications and relocate them to plant procedures. The component lists are not necessary to support the actions or surveillances required by the technical specifications. In addition, these revisions have been identified as a line item improvement to the technical specifications. The amendment also revised the technical specifications to relocate the reactor vessel material specimen withdrawal schedule to the updated safety analysis report.

*Date of issuance:* March 8, 1995

*Effective date:* March 8, 1995

*Amendment No.:* 76

*Facility Operating License No.* NPF-47. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR 65815) The additional information contained in the supplemental letter dated February 8, 1995, was clarifying in nature and thus within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995. No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana**

*Date of amendment request:* March 15, 1994

*Brief description of amendment:* The amendment revised the River Bend Station, Unit 1 technical specifications to remove the ''Turbine Overspeed System'' requirements and relocate them to plant procedures. The relocation of these requirements is a line item improvement to the technical specifications.

*Date of issuance:* March 15, 1995

*Effective date:* March 15, 1995

*Amendment No.:* 77

*Facility Operating License No.* NPF-47. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** May 25, 1994 (59 FR 27056) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:*Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* June 13, 1994

*Brief description of amendment:* The amendment modifies Clinton Power Station Technical Specification 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' by changing the frequency of leak testing the 36-inch supply and exhaust containment ventilation isolation valves. The test frequency, which is currently once every 184 days, will now be performed in accordance with 10 CFR 50, Appendix J. In the event the valves are opened, they must be leak tested within 92 days.

*Date of issuance:* March 6, 1995

*Effective date:* March 6, 1995

*Amendment No.:* 97

*Facility Operating License No.* NPF-62. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 28, 1994 (59 FR 49427) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois**

*Date of application for amendment:* January 27, 1995

*Brief description of amendment:* The amendment modifies the technical specifications (TSs) by eliminating selected response time testing as described in the BWROG topical report NEDO-32291, ''System Analyses for Elimination of Selected Response Time Testing Requirements.'' The affected TSs are TS 3.3.1.1, ''Reactor Protection System (RPS) Instrumentation,'' TS 3.3.5.1, ''Emergency Core Cooling System (ECCS) Instrumentation,'' TS 3.3.6.1, ''Primary Containment and Drywell Isolation Instrumentation,'' and TS 3.5.1, ''ECCS - Operating.''

*Date of issuance:* March 9, 1995

*Effective date:* March 9, 1995

*Amendment No.:* 98

*Facility Operating License No.* NPF-62. The amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 3, 1995 (60 FR 6739) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MichiganDate of application for amendments: August 12, 1992, as supplemented April 12, 1993.**

*Brief description of amendments:* The amendments change the minimum channels operable for the pressurizer safety valve position indicator acoustic monitor to two out of three total from one per valve.

*Date of issuance:* March 6, 1995

*Effective date:* March 6, 1995, with full implementation within 180 days

*Amendment Nos.:* 191 and 177

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6302) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* October 7, 1994

*Brief description of amendments:* The amendments remove the audit of the emergency and security plans and implementing procedures from the list of responsibilities of the Nuclear Safety and Design Review Committee (NSDRC). The amendment also removes the requirements for Plant Nuclear Safety Review Committee (PNSRC) review of the emergency and security plans, their implementing procedures, and changes to the implementing procedures. Changes to the composition of the PNSRC and the NSDRC are also made to reflect organizational changes and references to the Plant Manager in Section 6 are revised to Site Vice President/Plant Manager, or designee.

*Date of issuance:* March 6, 1995

*Effective date:* March 6, 1995

*Amendment Nos.:* 192 and 178

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 21, 1994 (59 FR 65816) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan**

*Date of application for amendments:* January 17, 1994, as supplemented February 10, 1995

*Brief description of amendments:* The amendments revise Technical Specification Section 3/4.1.3 to increase the limit for control rod misalignment at or below 85% rated thermal power. The amendments also increase the limit for control rod misalignment above 85% rated thermal power if there is sufficient margin in the heat flux and the nuclear enthalpy hot channel factors.

*Date of issuance:* March 15, 1995

*Effective date:* March 15, 1995

*Amendment Nos.:* 193/179

*Facility Operating License Nos.* DPR-58 and DPR-74. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** March 2, 1994 (59 FR 10008) The February 10, 1995, letter provided clarifying information which resolved a potential inconsistency between ACTION statement 3.1.3.1.c.2.d and the possibility that a greater misalignment may be allowed below 85% power than that allowed above 85% power. This letter did not change the staff's initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of application for amendment:* November 18, 1994

*Brief description of amendment:* The amendment changes the title of certain Plant Operation Review Committee members to reflect recent Maine Yankee organizational changes, deletes training requirements that duplicate 10 CFR 50.120; and changes the reporting frequency requirements and submittal schedule for the Radioactive Effluent Release and Estimated Dose and Meteorological Summary Reports to comply to 10 CFR 50.36a(a)(2).

*Date of issuance:* March 8, 1995

*Effective date:* March 8, 1995

*Amendment No.:* 148

*Facility Operating License No.* DPR-36: Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6303) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

**Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York**

*Date of application for amendment:* July 21, 1994, as supplemented, December 5, 1994, December 14, 1994, January 11, 1995, and February 1, 1995.

*Brief description of amendment:* The amendment revises Technical Specifications (TSs) 2.1.2 (Fuel Cladding Integrity), 3.1.7 (Fuel Rods), 3.6.2/4.6.2 (Protective Instrumentation), and the associated Bases to allow the use of Range 10 on the IRMs with the Reactor Protection System low pressure trip for main steam line isolation valve closure not in bypass. The amendment also makes associated changes to TSs Setpoints, Bases, References, and Notes for TSs 2.1.2, 3.1.7, and 3.6.2/4.6.2.

*Date of issuance:* March 3, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 153

*Facility Operating License No.* DPR-63: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 31, 1994 (59 FR 45028) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile PointNuclear Station, Unit 2, Oswego County, New York**

*Date of application for amendment:* October 21, 1994

*Brief description of amendment:* The amendment revises Technical Specification 4.8.1.1.2.a.8 by adding a footnote which permits performance of

the 24-hour functional test of the emergency diesel generators (EDGs) during power operation. Previously, the 24-hour functional test was required to be performed during shutdown. The amendment requires that the other two EDGs be operable during the tests and that the tests be aborted if either of the other two EDGs become inoperable.

*Date of issuance:* March 7, 1995

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 64

*Facility Operating License No.* NPF-69: Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 9, 1994 (59 FR 55875) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of application for amendments:* January 13, 1995

*Brief description of amendments:* The amendments revise Prairie Island Nuclear Generating Plant Technical Specification 4.4.D.1 to change the interval for the performance of the Residual Heat Removal (RHR) System leakage test from once every 12 months to perform the test during each refueling shutdown.

*Date of issuance:* March 8, 1995

*Effective date:* March 8, 1995, with full implementation within 30 days.

*Amendment Nos.:* 115 and 108

*Facility Operating License Nos.* DPR-42 and DPR-60. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995, (60 FR 6308) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 8, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Northern States Power Company, Docket Nos. 50-282 and 50-306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota**

*Date of application for amendment:* August 30, 1994

*Brief description of amendment:* The amendments revise the Technical Specifications (TS) for Prairie Island Nuclear Generating Plant as recommended by Generic Letter (GL) 93-05, ''Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operations.'' The amendments also revise the testing and calibration requirements associated with the containment hydrogen recombiners.

*Date of issuance:* March 10, 1995

*Effective date:* March 10, 1995, with full implementation within 30 days.

*Amendment Nos.:* 116/109

*Facility Operating License No.* DPR-42 and DRP-60. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6305) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

**Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California**

*Date of application for amendments:* August 17, 1994 (Reference LAR 94-07)

*Brief description of amendments:* The amendment relocates Technical Specifications (TS) 3/4.4.2.1, ''Safety Valves - Shutdown,'' 3/4.4.7, ''Chemistry,'' 3/4.4.9.2, ''Pressurizer (Temperature Limits),'' 3/4.4.10, ''Structural Integrity,'' and 3/4.4.11, ''Reactor Vessel Head Vents,'' in accordance with the Commission's Final Policy Statement for relocation of current TS that do not meet any of the screening criteria for retention. As part of the relocation of TS 3/4.4.2.1, TS 3/4.4.2.2, ''Safety Valves - Operating,'' would be revised to require that the pressurizer safety valves be operable in Mode 4 with the reactor coolant system cold-leg temperature greater than the low-temperature overpressure protection system enable temperature, and TS 6.8, ''Procedures and Programs,'' would be revised to include the reactor coolant pump flywheel inspection program.

*Date of issuance:* March 9, 1995

*Effective date:* Ninety days from date of issuance.

*Amendment Nos.:* Unit 1 - Amendment No. 98; Unit 2 - Amendment No. 97

*Facility Operating License Nos.* DPR-80 and DPR-82: The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 12, 1994 (59 FR 51621) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

**Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey Date of application for amendments: April 16, 1993**

*Brief description of amendments:* These amendments revised the Updated Final Safety Analysis Report to reflect the fact that the air-operated outboard isolation valves in the containment penetration for lines supplying control air to equipment in the containment, unlike other isolation valves, do not fail closed on loss of 125 Volt DC power to their control solenoids.

*Date of issuance:* March 16, 1995

*Effective date:* March 16, 1995

*Amendment Nos.* 164 and 145

*Facility Operating License Nos.* DPR-70 and DPR-75. The amendments revised the License.

*Date of initial notice in* **Federal Register:** May 26, 1993 (58 FR 30201) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:*Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

**Tennessee Valley Authority, Docket Nos. 50-259, 50-260, and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, AlabamaDate of application for amendments: October 12, 1993 (TS 320)**

*Brief description of amendment:* The proposed amendment would delete reference in the BFN Unit 3 Technical Specifications (TS) to the Reactor Water

Cleanup (RWCU) system floor drain high temperature switches and the RWCU system space high temperature switches. The amendment also adds clarifying remarks to Tables 3.2.A and 3.2.B of the TS for each of the BFN units. The remarks list the actuation signals for various primary containment valve group isolations.

*Date of issuance:* March 15, 1995

*Effective date:* March 15, 1995

*Amendment Nos.:* 219, 235, 193

*Facility Operating License Nos.* DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** January 5, 1994 (59 FR 630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 1995.No significant hazards consideration comments received: None

*Local Public Document Room location:*Athens Public library, South Street, Athens, Alabama 35611

*Local Public Document Room location:*Athens Public library, South Street, Athens, Alabama 35611

**Tennessee Valley Authority, Docket Nos. 50-259 and 50-296, Browns Ferry Nuclear Plant, Units 1 and 3, Limestone County, Alabama**

*Date of application for amendments:* March 31, 1994

*Brief description of amendment:* The proposed changes revise the setpoints for instrumentation used to isolate high energy line breaks in the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems. The amendment also defines specific areas where steam line space temperatures are monitored.

*Date of issuance:* March 16, 1995

*Effective date:* March 16, 1995

*Amendment Nos.:* 220 and 194

*Facility Operating License Nos.* DPR-33 and DPR-68: Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** August 17, 1994 (59 FR 42347) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 1995.No significant hazards consideration comments received: None

*Local Public Document Room location:*Athens Public library, South Street, Athens, Alabama 35611

**TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas**

*Date of amendment request:* November 18, 1994 (published in Federal Register as November 11, 1994)

*Brief description of amendments:* The proposed amendment would modify the technical specifications (TS) by deleting accelerated testing and special reporting requirements for CPSES Units 1 and 2 emergency diesel generators. These changes are based on Generic Letter 94-01, ''Removal of Accelerated Testing and Special Reporting Requirements for Emergency Diesel Generators,'' dated May 31, 1994.

*Date of issuance:* March 3, 1995

*Effective date:* March 3, 1995 to be implemented within 90 days of issuance

*Amendment Nos.:* Unit 1 - Amendment No. 35; Unit 2 - Amendment No. 21

*Facility Operating License Nos.* NPF-87 and NPF-89. The amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** December 7, 1994 (59 FR 63127) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

**Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri**

*Date of application for amendment:* August 4, 1994, as supplemented on October 31, 1994

*Brief description of amendment:* The amendment revises the Technical Specification Tables 3.3-1 and 4.3-1, and Bases pages B 2-8 and B 3/4 4-1. The changes reflect the reanalysis of the boron dilution transient for shutdown modes to address non-conservatisms in the previous event analysis.

*Date of issuance:* March 7, 1995

*Effective date:* March 7, 1995, and to be implemented within 30 days.

*Amendment No.:* 94

*Facility Operating License No.* NPF-30. Amendment revises the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 28, 1994 (59 FR 49439) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 1995. The October 31, 1994, letter provided supplemented information that did not change the initial proposed no significant hazards consideration determination.No Significant hazards consideration comments received: No.

*Local Public Document Room location:* Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251. Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

*Date of application for amendment:* December 14, 1994

*Brief description of amendment:* This amendment revises the identification of low reactor pressure instrument trip card from a ''slave'' trip card designation to a ''master'' trip card designation.

*Date of issuance:* March 3, 1995

*Effective date:* March 3, 1995

*Amendment No.:* 142

*Facility Operating License No.* DPR-28. Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6315) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 1995.No significant hazards consideration comments received: No

*Local Public Document Room location:* Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

**Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin**

*Date of application for amendments:* December 22, 1994, as supplemented by letters dated February 1, 1995 and February 21, 1995

*Brief description of amendments:* These amendments revise Point Beach Nuclear Plant Technical Specification (TS) Section 15.3.3, ''Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray,'' TS Section 15.3.4, ''Steam and Power Conversion System,'' TS Section 15.3.5, ''Instrumentation System,'' TS Section 15.3.7, ''Auxiliary Electrical Systems,'' TS Section 15.3.14, ''Fire Protection System,'' and TS Section 15.4.1, ''Operation Safety Review.'' The modifications delete obsolete TSs, provide spring 1995 outage-specific TSs as part of the ongoing diesel upgrade project, update several TSs to be consistent with the upgrade project design changes, and change one monthly testing requirement. In addition, the bases for TS Sections 15.3.3 and 15.3.7 are modified to be consistent with the TS changes.

*Date of issuance:* March 6, 1995

*Effective date:* March 6, 1995 and to be implemented within 45 days.

*Amendment Nos.:* 161 and 165

*Facility Operating License Nos.* DPR-24 and DPR-27. Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** February 1, 1995 (60 FR 6316).

The February 1, 1995, and February 21, 1995, submittals provided additional supplemental information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 6, 1995.No significant hazards consideration comments received: No.

*Local Public Document Room location:* Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

**Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No Significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are 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 for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By April 28, 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 a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. 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 a 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 a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 **(Project Director)**: 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 the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the 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).

**Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas**

*Date of amendment request:* March 9, 1995

*Brief description of amendments:* The amendments revise the reference in Technical Specification (TS) 6.9.1.6.b to the analytical method used to determine the heat flux hot channel factor for TS 3.2.2.

*Date of issuance:* March 14, 1995

*Effective date:* March 14, 1995, to be implemented prior to the end of the Unit 1 fifth refueling outage.

*Amendment Nos.:* Unit 1 - Amendment No. 72; Unit 2 - Amendment No. 61

*Facility Operating License Nos.* NPF-76 and NPF-80. The amendments revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 14,1995.

*Local Public Document Room location:* Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488

*Attorney for licensee:* Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, N.W., Washington, D.C. 20036

*NRC Project Director:* William D. Beckner

Dated at Rockville, Maryland, this 22nd day of March 1995.

For the Nuclear Regulatory Commission

**Elinor G. Adensam,**

*Acting Director, Division of Reactor Projects - III/IV, Office of Nuclear Reactor Regulation*

[Doc. 95-7570 Filed 3-28-95; 8:45 am]

BILLING CODE 7590-01-F

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Patricia Paige, (202) 606–0830.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on March 13, 1995 (60 FR 13488). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 1995, and February 28, 1995, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

**Schedule A**

The following exception was established:

*Ounce of Prevention Council*

Up to 25 positions established to create the President's Prevention Council Office supporting the Ounce of Prevention Council created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointment may be made under this authority after February 29, 1996. Effective February 13, 1995.

**Schedule B**

The following exception was established:

*National Archives and Records Administration*

Executive Director, National Historical Publications and Records Commission. Effective February 16, 1995.

**Schedule C**

The following exceptions were established:

*Agency for International Development*

Special Assistant to the Assistant Administrator, Bureau for Europe and New Independent States. Effective February 16, 1995.

Public Affairs Specialist to the Chief, Public Liaison Office, Bureau for Legislation and Public Affairs. Effective February 24, 1995.

*Commission on Civil Rights*

Special Assistant to the Commissioner. Effective February 22, 1995.

*Department of Agriculture*

Special Assistant to the Administrator, Food and Nutrition Service. Effective February 10, 1995.

Staff Assistant to the Secretary of Agriculture. Effective February 22, 1995.

*Department of the Army (DOD)*

Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management). Effective February 14, 1995.

Staff Assistant to the Assistant Secretary of the Army. Effective February 22, 1995.

*Department of Commerce*

Confidential Assistant to the Deputy Assistant Secretary for International Economic Development. Effective February 1, 1995.

Confidential Assistant to the Deputy Assistant Secretary for Administration. Effective February 1, 1995.

Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service. Effective February 2, 1995.

Director, Office of Export Promotion Coordination to the Deputy Assistant Secretary for Trade Development. Effective February 3, 1995.

Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective February 2, 1995.

Special Assistant to the Director, Minority Business Development Agency. Effective February 14, 1995.

Confidential Assistant to the Under Secretary for Travel and Tourism. Effective February 21, 1995.

Confidential Assistant to the Director, Office of Public Affairs. Effective February 22, 1995.

*Department of Defense*

Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy). Effective February 2, 1995.

Defense Fellow to the Assistant Secretary of Defense (International Security Affairs). Effective February 6, 1995.

Personal and Confidential Assistant to the Under Secretary of Defense (Policy). Effective February 22, 1995.

*Department of Energy*

Special Assistant to the Director, Press Services Division. Effective February 2, 1995.

*Department of Housing and Urban Development*

Legislative Officer to the Deputy Assistant Secretary for Legislation. Effective February 16, 1995.

Special Projects Officer to the Deputy Secretary, Field Management. Effective February 17, 1995.

Deputy Assistant Secretary for Empowerment Zones to the Assistant Secretary for Community Planning and Development. Effective February 24, 1995.

Special Assistant to the Assistant Secretary for Public and Indian Housing. Effective February 28, 1995

*Department of the Interior*

Special Assistant to the Director, National Biological Service. Effective February 1, 1995.

Staff Assistant to the Special Assistant to the Director, National Park Service. Effective February 3, 1995.

Special Assistant to the Director, National Parks Service. Effective February 7, 1995.

Special Assistant (White House Liaison) to the Deputy Chief of Staff. Effective February 7, 1995.

Director, Office of Regulatory Affairs to the Associate Deputy Chief of Staff. Effective February 8, 1995.

*Department of Justice*

Assistant to the Associate Attorney General. Effective February 15, 1995.

*Department of Labor*

Deputy Assistant Secretary to the Assistant Secretary for Occupational Safety and Health, Occupational Safety and Health Administration. Effective February 2, 1995.

Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 3, 1995.

Special Assistant to the Deputy Secretary. Effective February 14, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 17, 1995.

Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 28, 1995.

Special Assistant to the Assistant Secretary for Public Affairs. Effective February 28, 1995.

*Department of State*

Secretary to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective February 7, 1995.

Special Assistant to the U.S. Permanent Representative to the United Nations. Effective February 7, 1995.

Protocol Officer to the Chief of Protocol. Effective February 7, 1995.

Protocol Assistant to the Deputy Chief of Protocol. Effective February 7, 1995.

Special Advisor to the Director, Policy Planning Staff. Effective February 27, 1995.

Special Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs. Effective February 27, 1995.

*Department of Transportation*

Scheduling Assistant to the Special Assistant for Scheduling and Advance. Effective February 24, 1995.

*Federal Mine Safety and Health Review Commission*

Confidential Assistant to the Commissioner. Effective February 28, 1995.

*Interstate Commerce Commission*

Confidential Assistant to the Chairman. Effective February 3, 1995.

Executive Assistant to the Commissioner. Effective February 28, 1995.

*Office of Management and Budget*

Confidential Assistant to the Associate Director for Legislative Affairs. Effective February 2, 1995.

Legislative Assistant to the Associate Director for Legislative Affairs. Effective February 7, 1995.

Special Assistant for Policy and Legislation to the Associate Director for Legislative Affairs. Effective February 7, 1995.

*President's Commission on White House Fellowships*

Special Assistant to the Director, President's Commission on White House Fellowships. Effective February 22, 1995.

*Small Business Administration*

Consumer Affairs Officer to the Associate Administrator, Communications and Public Liaison. Effective February 3, 1995.

Special Assistant to the Consumer Affairs Officer. Effective February 3, 1995.

Assistant to the Administrator, Small Business Administration. Effective February 6, 1995.

*United States Information Agency*

Special Assistant to the Associate Director for Programs, Bureau of Information. Effective February 28, 1995.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958, Comp., p. 218.

Office of Personnel Management.

**Lorraine A. Green,**

*Deputy Director.*

[FR Doc. 95–7635 Filed 3–28–95; 8:45 am]

BILLING CODE 6325–01–M

## PENSION BENEFIT GUARANTY CORPORATION

### Disaster Relief

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of disaster relief in response to California floods.

**SUMMARY:** The Pension Benefit Guaranty Corporation is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review and standard and distress termination regulations. This relief is generally available to persons residing in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the severe floods in California.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The Pension Benefit Guaranty Corporation (''PBGC'') administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended (''ERISA''), 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Five areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, (4) deadlines for filing a distress termination notice and, in the case of a plan that is sufficient for guaranteed benefits, issuing notices of benefit distribution and completing the distribution of plan assets, and (5) deadlines for filing requests for reconsideration or appeals of certain agency determinations.

On March 12, 1995, the President of the United States declared, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the severe floods in California. At this time, fifty California counties are designated areas (within the meaning of Federal Emergency Management Agency (''FEMA'') regulations; 44 CFR 205.2(a)(5)).

Given the severity of this major disaster, as the Acting Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, and standard termination deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business, or for which the office of a service provider, bank, insurance company, or other person maintaining information necessary to meet the applicable deadlines, is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area.

The PBGC had issued an earlier notice of disaster relief in response to the severe flooding in California (60 FR 7596, February 8, 1995). Filers who fell within the scope of that notice were afforded relief in various areas, provided that they took certain actions by March 2, 1995. The PBGC is extending the March 2, 1995, deadline to April 30, 1995, in the case of filers to whom today's notice is applicable under the rules stated in the immediately preceding paragraph.

### Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after February 13, 1995, and before April 30, 1995, if the payment is made by April 30, 1995. The PBGC is not permitted by law to waive late payment interest charges. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

### Section 4071 Penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices that were, or will be, required to be filed with the PBGC on or after February 13, 1995, and before April 30, 1995, if the notice is filed by April 30, 1995:

(1) Post-distribution certification for single-employer plan (PBGC Form 501 or 602; ERISA section 4041(b)(3)(B) or (c)(3)(B); 29 CFR 2617.28(h) or 2616.29(b)),

(2) Notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2),

(3) Notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)), and

(4) Reportable event notice, except for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or transactions involving a change in contributing sponsor or controlled group (29 CFR 2615.21, 2615.22, and 2615.23), or reportable events described in amended ERISA section 4043(c) (9)–(12). (Subsection (b) of section 4043 as it presently appears in 29 U.S.C. 1343 was redesignated as subsection (c) and amended, in part, with the addition of new reportable events in paragraphs (9) through (12) by the Retirement Protection Act of 1994, Subtitle F, Title VII, Uruguay Round Agreements Act, Sec. 771(c)(3), Public Law 103–465, 108 Stat. 5042 (1994) (the (''RPA amendments'').)

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed:

(1) Notice of failure to make required contributions totaling more than $1 million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.31). The timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late.

(2) Notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. The timely filed notice must include at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable.

(3) Notice of a reportable event described in the RPA amendments for

which notice is required no later than 30 days after the event occurs.

(A) If the event is reportable under both the RPA amendments and 29 CFR 2615, the notice will be considered timely filed if the notice satisfies the requirements described in paragraph (2) above.

(B) If the event is reportable only under the RPA amendments, the notice will be considered timely filed if the notice includes at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9).

(4) Notice of a reportable event described in the RPA amendments for which notice is required at least 30 days before the event occurs. The notice will be considered timely filed if the filer makes a good faith effort to include with the notice at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable, may be filed late and should be filed as soon thereafter as it is available.

This relief applies to notices that were, or will be, required to be filed with the PBGC on or after February 13, 1995, and before April 30, 1995, provided that all supporting information and documentation are filed by April 30, 1995.

**Standard and Distress Termination Notices and Distribution of Assets**

With respect to a standard termination for which the standard termination notice is required to be filed, or the distribution of plan assets is required to be completed, on or after February 13, 1995, the PBGC is (pursuant to 29 CFR 2617.25(a)(2) and 2617.28(f)(4)) extending to April 30, 1995, the time within which the standard termination notice must be filed (and, thus, the time within which notices of plan benefits must be provided) and the time within which the distribution of plan assets must be completed. With respect to a distress termination for which the distress termination notice is required to be filed or, in the case of a plan that is sufficient for guaranteed benefits, other actions must be taken on or after February 13, 1995, the PBGC is (pursuant to 29 CFR 2616.10(a) and 2616.24(d)) extending to April 30, 1995, the time within which the termination notice must be filed and, in the case of a plan that is sufficient for guaranteed benefits, notices of benefit distribution must be provided and plan assets must be distributed. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification.

**Requests for Reconsideration or Appeals**

For persons who are aggrieved by certain agency determinations and for whom a request for reconsideration or an appeal is required to be filed on or after February 13, 1995, and before April 30, 1995, the PBGC is (pursuant to 29 CFR § 2606.4(b)) extending the time for filing to April 30, 1995.

**Applying for Waivers/Extensions**

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print ''CALIFORNIA FLOOD RELIEF (MARCH 1995), County of (fill in appropriate county name and state)'' at the top center.

Issued in Washington, DC, this 22nd day of March 1995.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 95–7703 Filed 3–28–95; 8:45 am]

**BILLING CODE 7708–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–35529; File No. SR–BSE–95–04]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to the Permanent Approval of BEACON Subscriber Credits

March 23, 1995.

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 the February 13, 1995, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On March 13, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change,[1] and on March 23, 1995, the Exchange submitted Amendment No. 2 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange seeks permanent approval of its fee schedule regarding BEACON subscriber credits.[3] The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

*TRANSACTION FEES*

*Trade Recording and Comparison Charges*

| | |
|---|---|
| Trade up to and including 2,000 shares | No charge. |
| All trades accumulate for volume discounts | No charge. |
| *Trades above 2,000 shares | |
| First 2,500 trades per month | $.29 per 100 shares. |
| Next 2,500 trades per month | .25 per 100 shares. |
| Next 2,500 trades per month | .15 per 100 shares. |
| Over 7,500 trades per month | .05 per 100 shares. |
| Maximum charge per side (non-cross) | 50.00. |

[1] See letter from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 9, 1995. Amendment No. 1 corrects Exhibit the fee being amended and deleting unnecessary language.

[2] See letter from Karen Aluise, Assistant Vice President, Boston Stock Exchange, to Jennifer Choi, Attorney, Division of Market Regulation, SEC, dated March 22, 1995. Amendment No. 2 corrects Exhibit volume discounts'' below the schedule of volume discounts.

[3] This credit was approved initially by the Commission for a period of one hundred and twenty days, which ended on January 30, 1995. See Securities Exchange Act Release No. 34868 (Oct. 20,

*TRANSACTION FEES*—Continued

*Trade Recording and Comparison Charges*

| | |
|---|---|
| Maximum charge per side (cross) | 25.00. |
| All trades accumulate for volume discounts[4]. | |
| **BEACON subscriber Credits* | *.25 per trade.* |
| *All non-self-directed, electronically routed trades (credit is limited to total monthly layoff transaction fees)* | |

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to seek permanent approval of the portion of the Exchange's fee schedule that relates to the $.25 per trade credit on all non-self-directed, electronically routed, Exchange executed, trades of any size. For purposes of the per trade credit, ''non-self-directed'' shall mean entered by a BEACON subscriber in a stock in which the routing firm has no affiliation with or financial interest in the specialist operation registered in such stock. The aggregate credit per firm shall be limited to the total monthly layoff transaction fees charged to that firm.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 Exchange. All submissions should refer to File No. SR–BSE–95–04 and should be submitted by April 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–7705 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

[4] Regardless of the size of a particular trade, all trades accumulate for volume discounts for trades over 2,000 shares. For example, if 2,501 trades were conducted with the first 2,500 trades at 100 shares per trade and the last trade at 2,001 shares, the first 2,500 trades would be assessed no fee and the 2,501 trade at 2,001 shares would be charged $.25 per 100 shares. Telephone conversation with Karen Aluise, BSE, and Jennifer S. Choi, SEC, on March 14, 1995.

[5] The layoff transaction fees refer to the trade recording and comparison charges incurred by a firm as a result of executing layoff trades. The term ''layoff'' refers to any trade wherein a specialist is eliminating (or decreasing) a position in a security in which he makes a market. Telephone conversation with Karen Aluise, BSE, and Jennifer S. Choi, SEC, on March 14, 1995.

**[Release No. 34–35531; File No. SR–CHX–95–07]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Technical Amendments to the Exchange's MAX Rules

March 23, 1995.

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 March 1, 1995, the Chicago Stock Exchange, Incorporated (''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 Exchange proposes to amend Rule 37(b) of Article XX, relating to the Exchange's Midwest Automated Execution System (''MAX''). The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

**Article XX**

Rule 37

(b) The Exchange's Midwest Automated Execution System (the MAX System) may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule (Article XX, Rule 37(a)) and certain other orders. In the event that an order that is subject to the BEST Rule [and] is sent through MAX, it shall be executed in accordance with the parameters of the BEST Rule and the following. In the event that an order that is not subject to the BEST Rule is sent through MAX, it shall be executed in accordance with the parameters of the following:

(1) Size. The MAX System has two size parameters which must be designated by the specialist on a stock-by-stock basis. The first parameter, the auto-execution threshold, must be set at 1099 shares (the default size) or greater. The second parameter, the auto-acceptance threshold, must be set at 2099 shares (the *system* default [size]) or greater. In no event may the auto-acceptance threshold be less than the auto-execution threshold. If the order sending firm sends an order through MAX that is greater than the Specialist's auto-acceptance threshold, a Specialist may cancel the order within three minutes of it being entered into MAX. If not canceled by the Specialist, the order will be designated as an open order. If the order sending firm sends an order through MAX that is less than the auto-acceptance threshold but greater than the auto-execution threshold, the order will not be available for automatic execution but will be designated in the open order book. A specialist may manually execute any portion of such order and the difference shall remain as an open order. If the order sending firm sends an order through MAX that is less than or equal to the auto-execution threshold, such order will be automatically executed.

* * * * *

(7) Pricing *For Automatic Execution.* All agency market orders *and all limit orders that are marketable when entered into the MAX System, that are of a size less than or equal to the auto-execution threshold and are* eligible for execution under the BEST Rule will *automatically* be filled at the best bid (for a sell order) or offer (for a buy order) disseminated pursuant to SEC Rule 11Ac1–1 or better. [All agency limit orders will be filled at the limit price (i) when the stock is bid or offered at the limit price with sufficient size, as the case may be, in the primary market, and (ii)] *All other agency limit orders will automatically be filled at the limit price* when there is a price penetration of the limit price in the primary market. However, if the price differential between the trade-through price and the last sale is more than ¼ point of 1% of the value of the trade-through price, which ever is less, a second print at a trade-through price which is less than ¼ point (or 1%) away from the previous trade-through price is necessary before the MAX System will automatically execute the agency limit order. For purposes of this Rule, ''agency order'' shall mean an order for the account for a customer but shall not include professional orders as defined in Article XXX, Rule 2, interpretation and policy .04.

* * * * *

*(10) All market orders received through the MAX System that would result in an out of range execution shall be deemed to be received with a request to STOP. Subject to Interpretations and Policies .03 under paragraph (a) under this Rule 37, a specialist may execute a stopped order out of the primary market range, at no worse than the stopped price, provided the specialist receives approval to do so from two floor officials.*

[(10)] *(11)* Notwithstanding anything in this Rule to the contrary, no market order *or limit order that is marketable when entered into the MAX System* [entered in MAX] will be [required to be] automatically executed if the size associated with the best bid or offer disseminated pursuant to SEC Rule 11Ac1–1 is of a size less than *such* [the] market order *or limit order* [entered in MAX].

## 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

In the Securities Exchange Act Release No. 35010 (Nov. 28, 1994), 59 FR 62767 (Dec. 6, 1994), the Exchange codified the operation of the CHX's MAX System into CHX Article XX, Rule 37(b). However, the codification contained several inadvertent errors and omissions. The purpose of the proposed change is to make technical changes to Rule 37(b) to correct those inadvertent errors and omissions.

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, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change will impose no burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange [1] 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

[1] The rules regarding the operation of the CHX's MAX System were in existence before exchanges were required to file their rules with the Commission. Telephone conversation with David Rusoff, Foley & Lardner, and Glen Barrentine, Senior Counsel, SEC, on March 20, 1995.

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 Exchange. All submissions should refer to File No. SR–CHX–95–07 and should be submitted by April 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–7706 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–35525; File No. SR–NASD–95–05]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Time Period for the Exchange of Documents Before an Arbitration Hearing

March 23, 1995.

On February 1, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 thereunder.[2] The proposed rule change amends Section 32(c) of the Code of Arbitration Procedure ''(Code'') [3] to require the parties to exchange documents at least 20 days before a hearing, instead of 10 days before a hearing as currently required.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 35370, February 14, 1995) and by publication in the **Federal Register** (60 FR 9708, February 21, 1995). No comment letters were received. This order approves the proposed rule change.

Section 32(c) currently requires all parties to serve on each other's copies of documents in their possession they intend to present at the hearing and to identify witnesses they intend to present at the hearing not less than 10 calender days prior to the first scheduled hearing date. Parties often request additional discovery as a result of information obtained through the exchange of documents. These requests can create a significant burden on the NASD's Arbitration Department, which currently must respond in a short period of time to numerous requests for additional discovery that arise from the exchange of documents intended to be used by the parties at the hearing. These request also can create a significant burden on the arbitrators and the parties. Therefore, the NASD has amended Section 32(c) of the Code to require the parties to exchange documents at least 20 days before a hearing, instead of 10 days before a hearing as currently required.[4] The rule change is intended to reduce the burden to the NASD's Arbitation Department, arbitrators and the parties in responding to last minute discovery requests by requiring parties to exchange documents earlier in the arbitration process.

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act [5] because the rule change will protect investors and the public interest by requiring parties to exchange documents earlier in the arbitration process. This, in turn, will facilitate the arbitration process by providing a more reasonable time frame in which to address last minute discovery requests and by reducing the burdens on the forum staff, arbitrators and the parties in dealing with such requests.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that File No. SR–NASD–95–05 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. 95–7707 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

**[Release No. 34–35528; File No. SR–Phlx–94–77]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to Proposed Rule Change Relating to the Imposition of an Approved Lessor's Initiation Fee and a Requirement that Approved Lessors Pledge to Abide by the By-Laws and Rules

March 23, 1995.

### I. Introduction

On January 11, 1995, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 its By-Laws, Article XII, Section 12–8 by adding a new paragraph (e), which would impose an initiation fee of $1,500.00 on an approved lessor and a requirement that approved lessors pledge to abide by the Phlx By-Laws and Rules. On January 26, 1995, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change.[3] Amendment No. 1 proposed to alter the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee.

The proposed rule change was published for comment in Securities Exchange Act Release No. 35302 (Jan. 31, 1995), 60 FR 7254 (Feb. 7, 1995). No comments were received on the proposal. On March 20, 1995, the Exchange submitted to the Commission Amendment No. 2 to the proposed rule change.[4] This order approves the proposed rule change, including Amendment No. 2 on an accelerated basis.

### II. Description of the Proposals

At the present time, the Exchange's By-Laws impose an initiation fee of $1,500.00 on a member upon election and on a non-member foreign currency options participant [5] upon the purchase

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 32(c) (CCH) ¶3732.

[4] The Securities Industry Conference on Arbitration approved this proposal as an amendment to the Uniform Code of Arbitration at its meeting on October 21, 1994.

[5] 15 U.S.C. 78*o*–3.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1994).

[3] See letter from Murray L. Ross, Secretary, Phlx, to Sharon Lawson, Assistant Director, SEC, dated January 25, 1995.

[4] See letter from Murray L. Ross, Secretary, Phlx, to Glen Barrentine, Senior Counsel, SEC, dated March 16, 1995.

[5] The term ''foreign currency options participant'' includes a member of the Exchange who has purchased a foreign currency options participation and a non-member who has been admitted to the

Continued

of a foreign currency options participation.[6] The By-Laws, however, only impose a fee on an approved lessor[7] when a lessor makes an application to lease a membership.[8] The Exchange's By-Laws also currently require persons elected to membership and non-members admitted as foreign currency options participants to pledge in writing to abide by the Phlx By-Laws and Rules.[9]

The Exchange proposes to amend the By-Laws, Article XII, Section 12–8 by adding a new paragraph (e), which would impose an initiation fee of $1,500.00 on approved lessors and By-Laws, Article XII, Section 12–9 by adding a new paragraph (b), which would require that approved lessors pledge to abide by the By-Laws and Rules of the Exchange. The Exchange also is amending the Schedule of Fees and Charges to conform to the change in the By-Laws with respect to the initiation fee. The proposed rule change requires that an approved lessor pay the initiation fee upon registration.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[10] Specifically, the Commission believes the proposal is consistent with the requirements of Section 6(b)(4), which requires the rules of an exchange to provide for equitable allocation of fees and charges, and Section 6(b)(5), which requires the rules of an exchange to 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 interest.

Under new Section 12–8(e), Article XII of the By-Laws, an approved lessor must pay an initiation fee of $1,500.00 upon registration. Members who lease their membership to a lessee are not required by the Exchange to register as approved lessors, and, therefore, will not be subject to an additional fee. The Commission believes that the fee amendments to the By-Laws and Schedule of Fees and Charges equitably allocate reasonable fees among the users of its facilities by assessing the same fee on purchasers of equitable title to Phlx membership and non-member foreign currency options participations.

New Section 12–9(b), Article XII of the By-Laws, also requires an approved lessor to pledge to abide by the By-Laws and Rules of the Exchange. The Commission believes that such a requirement furthers the interest of investors and the public in that it serves to impress upon approved lessors their obligations to comply with the By-Laws and Rules of the Exchange.

Moreover, the Commission finds good cause for approving Amendment No. 2 to the rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The Exchange's original proposal was published in the **Federal Register** for the full statutory period and no comments were received.[11] Amendment No. 2 does not affect the substance of the original proposal but merely would place the requirement that approved lessors pledge to abide by the By-Laws and Rules in Article XII, Section 12–9 of the By-Laws (Acceptance of By-Laws) rather than in Article XII, Section 12–8 (Admission and Transfer Fees) as originally proposed.

### 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 Exchange. All submissions should refer to File No. SR–Phlx–94–77 and should be submitted by April 19, 1995.

### V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–94–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–7708 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. IC–20963; International Series Release No. 796; 812–9380]**

## The Bank of New York, et al.; Notice of Application

March 22, 1995.

**AGENCY:** Securities and Exchange Commission (''SEC'').

**ACTION:** Notice of application for order under the Investment Company Act of 1940 (''Act'').

**APPLICANT:** The Bank of New York (''BNY'').

**RELEVANT ACT SECTIONS:** Order requested under section 6(c) for an exemption from section 17(f).

**SUMMARY OF APPLICATION:** Applicant requests an order that would permit Bank of New York-Argentina to act as custodian or subcustodian for investment company assets in Argentina under two alternative forms of foreign custody arrangements.

**FILING DATES:** The application was filed on December 20, 1994 and amended on March 7, 1995 and March 15, 1995.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 17, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature

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Exchange as a foreign currency options participant. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(i), (CCH) ¶ 1001.

[6] The initiation fee imposed on members upon election also applies to non-member foreign currency options participants. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(m), (CCH) ¶ 1001.

[7] The term ''approved lessor'' means a lessor approved by the Exchange under its By-Laws and Rules. See Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(h), (CCH) ¶ 1001. A ''lessor'' is a holder of equitable title to a membership in the Exchange including a former member of the Exchange, who has leased legal title to his membership to a lessee. *See* Philadelphia Stock Exchange Guide, By-Laws, Article I, Section 1–1(f), (CCH) ¶ 1001.

[8] See Philadelphia Stock Exchange Guide, By-Laws, Article XII, Section 12–8(c), (CCH) ¶ 1001.

[9] See Philadelphia Stock Exchange Guide, By-Laws, Article XII, Section 12–9, (CCH) ¶ 1284.

[10] 15 U.S.C. 78f(b) (1988).

[11] Securities Exchange Act Release No. 35302 (Jan. 31, 1995), 60 FR 7254 (Feb. 7, 1995).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, One Wall Street, New York, New York 10286.

**FOR FURTHER INFORMATION CONTACT:** Fran Pollack-Matz, Senior Attorney, at (202) 942–0570 or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**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.

**Applicant's Representations**

1. BNY is incorporated and doing business under the laws of the State of New York, and is regulated as a bank by the Superintendent of Banks of that State. BNY is a subsidiary of The Bank of New York Company Inc., which is one of the leading financial services providers in the United States. BNY maintains a network of custody and subcustody service providers for United States investment companies (''U.S. Investment Companies'') and their custodians at various locations throughout the world.

2. BNY-Argentina, a wholly-owned subsidiary of BNY, is authorized to engage in the business of commerical banking in Argentina. BNY-Argentina offers customers a wide range of retail and wholesale banking services, including custody services to support Argentine and foreign investors.

3. BNY requests relief to permit BNY-Argentina to provide custody services in accordance with the following arrangements: (i) BNY, as custodian or subcustodian for a U.S. Investment Company, will deposit, or cause or permit the U.S. Investment Company to deposit, its assets with BNY-Argentina as delegate for BNY, or (ii) BNY-Argentina, as custodian or subcustodian, will receive and hold the assets of a U.S. Investment Company directly from such U.S. Investment Company, its custodian or subcustodian. Under either arrangement BNY will assume liability for losses caused by BNY-Argentina and there will be no difference in the scope of BNY's liability under either arrangement.

4. BNY is proposing these alternative arrangements to make the services of BNY-Argentina available to U.S. Investment Companies (or their custodians) whether or not those customers use the services of BNY as global custodian. If a U.S. Investment Company does not wish to use the global custody services of BNY, it may use the services of BNY-Argentina directly without incurring the operational constraints, inconvenience, and cost of interposing an additional point of contact in the custody chain.

**Applicant's Legal Analysis**

1. Section 17(f) of the Act provides that a registered management investment company may maintain securities and similar assets in the custody of a bank meeting the requirements of section 26(a) of the Act, a member firm of a national securities exchange, the investment company itself, or a system for the central handling of securities established by a national securities exchange. Section 2(a)(5) of the Act defines ''bank'' to include banking institutions organized under the laws of the United States, member banks of the Federal Reserve System, and certain banking institutions or trust companies doing business under the laws of any state or of the United States. BNY-Argentina does not fall within the definition of ''bank'' as defined in the Act and, under section 17(f), may not act as custodian for registered investment companies.

2. Rule 17f–5 permits certain entities located outside the United States to serve as custodian for investment company assets. One such entity is a majority-owned direct or indirect subsidiary of a qualified U.S. bank or bank holding company that is incorporated or organized under the laws of a country other than the United States and that has shareholders' equity in excess of $100,000,000. The rule defines the term ''Qualified U.S. Bank'' to include a banking institution organized under the laws of the United States that has an aggregate capital, surplus, and undivided profit of not less than $500,000. BNY is a Qualified U.S. Bank as defined in the rule. BNY-Argentina, however, does not qualify as an eligible foreign custodian because it does not meet the minimum shareholders' equity requirement.

3. Applicant requests an order under section 6(c) of the Act that would exempt it from section 17(f) to the extent necessary for BNY-Argentina to maintain custody of assets of U.S. Investment Companies. Applicant believes that the exemption is necessary or appropriate in the Public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

**Applicant's Conditions**

If the requested order is granted, applicant agrees to the following conditions:

1. The foreign custody arrangements proposed regarding BNY-Argentina will satisfy the requirements of rule 17f–5 in all respects other than BNY-Argentina's level of shareholders' equity.

2. BNY, any U.S. Investment Company, and any custodian for a U.S. Investment Company, will deposit assets with BNY-Argentina only in accordance with one of the two contractual arrangements described below, which arrangement will remain in effect at all times during which BNY-Argentina fails to satisfy the requirements of rule 17f–5.

a. *The Custody Agreement/ Subcustody Agreement Arrangement.* Where BNY acts as custodian or subcustodian for a U.S. Investment Company, it will deposit assets with BNY-Argentina only in accordance with the Custody Agreement and Subcustody Agreement described below.

i. The Custody Agreement will be between BNY and the U.S. Investment Company (or its custodian). In that agreement, BNY will undertake to provide specified custody or subcustody services, and the U.S. Investment Company (or its custodian) will authorize BNY to delegate to BNY-Argentina such of BNY's duties and obligations as will be necessary to permit BNY-Argentina to hold in custody the assets of U.S. Investment Companies. The Custody Agreement will further provide that BNY will be liable for any loss, damage, cost, expense, liability, or claim due to such delegation, except such loss as may result from (a) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency of BNY-Argentina) for which neither BNY nor BNY-Argentina would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, acts of God, nuclear incidents, and the like).

ii. A Subcustody Agreement will be executed by BNY and BNY-Argentina. Pursuant to this agreement, BNY will delegate to BNY-Argentina such of BNY's duties and obligations as will be necessary to permit BNY-Argentina to hold assets in custody in Argentina. The Subcustody Agreement will explicitly provide that (i) BNY-Argentina is acting as a foreign custodian for assets that belong to a U.S. Investment Company pursuant to the terms of an exemptive order issued by the SEC and (ii) the U.S.

Investment Company or its custodian (as the case may be) that has entered into a Custody Agreement will be entitled to enforce the terms of the subcustody Agreement and can seek relief directly against BNY-Argentina. Further, the Subcustody Agreement will be governed either by New York law or by Argentina law. If it is governed by Argentine law, BNY shall obtain an opinion of Argentina Counsel opining as to the enforceability of the rights of a third party beneficiary under the laws of Argentina.

b. *The Three-Party Agreement Arrangement.* Where BNY-Argentina acts directly as custodian or subcustodian for a U.S. Investment Company, BNY-Argentina will receive assets only in accordance with a three-party agreement (the ''Three-Party Agreement'') among (i) BNY-Argentina, (ii) BNY, and (iii) the U.S. Investment Company or any custodian for a U.S. Investment Company, pursuant to which BNY-Argentina will undertake to provide specified custody or subcustody services. The Three-party Agreement will provide that BNY will be liable for any loss, damage, cost, expense, liability, or claim due to such delegation, except such loss as may result from (a) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife, or armed hostilities) and (b) other risks of loss (excluding bankruptcy or insolvency of BNY-Argentina) for which neither BNY nor BNY-Argentina would be liable under rule 17f–5 (*e.g.*, despite the exercise of reasonable care, acts of God, nuclear incidents, and the like).

3. BNY currently satisfies and will continue to satisfy the Qualified U.S. Bank requirement set forth in rule 17f–5(c)(3).

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 95–7651 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

**[File No. 1–8502]**

## Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Comptek Research, Inc., Common Stock, $0.02 Par Value)

March 23, 1995.

Comptek Research, 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'') form 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:

According to the Company, the Security was originally registered on the BSE in July 1983. In July 1987, the Company registered the Security on the American Stock Exchange, Inc. (''Amex''). Substantially, all of the trading activities in the Security occurs on the Amex. In 1994, for example, the total volume of Security traded in all markets was 2,370,200. Trades on the Amex constituted 2,257,400 or 95% of the total volume.

The Company anticipates that delisting from the BSE will result in a savings of annual fees paid to the BSE, as well as administrative costs. The Company submits that listing on the Amex, the primary market for trading activities in the Security is currently sufficient, and continued listing on the BSE serves no substantial benefit to shareholders.

Any interested person may, on or before April 13, 1995, 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 exchange 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. 95–7652 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

## Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Pet Incorporated, 5¾% Notes due 1998 and 6½% Notes due 2003) File No. 1–10672

March 23, 1995.

Pet Incorporated (''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 securities (''Securities'') from listing and registration on the New York Stock Exchange, Inc. (''NYSE'').

The Company is a majority owned subsidiary of The Pillsbury company, a Delaware corporation, and an indirect majority owned subsidiary of Grand Metropolitan Public Limited Company, a company organized under the laws of England (''GrandMet''). On February 9, 1995, TPC America Holdings, Inc., a Delaware corporation and a wholly-owned subsidiary of The Pillsbury Company (''TPC''), acquired approximately 94% of the issued and outstanding shares of the Company's Common Stock pursuant to a tender offer for all of the outstanding shares. The Tender Offer was pursuant to the Agreement and Plan of Merger among the Company, Pillsbury, TPC and, solely with respect to specified portions of the Merger Agreement, GrandMet. TPC will be merged with and into the Company pursuant to The Merger Agreement.[1] The Merger is expected to be consummated on May 12, 1995.

Pursuant to the approval of GrandMet's Executive Committee granted on March 7, 1995, GrandMet intends to guarantee the payment of principal and interest on the outstanding Securities. In addition, GrandMet will annually provide the holders of the Securities with copies of GrandMet's annual audited consolidated financial information.

The reasons alleged in the application for withdrawing the Security from listing and registration includes the following:

According to the Company, the Securities should be withdrawn on the NYSE because:

(1) The Securities are held by a small number of holders. As of January 13, 1995, there were 9 registered holders of the 5¾% Notes Due 1998 and 16 registered holders of the 6½% Notes Due 2003;

(2) No trading in the Securities has been reported on the NYSE since the issuance in July of 1993;

(3) Upon the withdrawal of the Securities and the Common Stock from listing on the NYSE and the deregistration of the Securities and the Common Stock, the Company will no longer be subject to the reporting requirements of the Exchange Act. As a consequence, the Company will not be required to incur the costs of preparing

[1] The Company intends to request the NYSE to file an application to strike the Common Stock from listing and registration on the NYSE effective as of the consummation of the Merger.

separate annual and periodic reports. The Company notes that it is not obligated under any document to maintain the listing or registration of the Securities on the NYSE or any other national securities exchange; and

(4) According to the Company, GrandMet intends to guarantee the payment of principal and interest on the outstanding Securities and will annually provide the holders of outstanding Securities with copies of GrandMet's annual audited consolidated financial information. We note that the credit rating of GrandMet debt is currently higher than the Company's and that, based on current ratings, the Guarantee will effectively improve the rating of the Securities.

Any interested person may, on or before April 13, 1995, 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 exchange 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 of 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. 95–7653 Filed 3–28–95; 8:45 am]

BILLING CODE 8010–01–M

## THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

### Affordable Housing Advisory Board Meeting

**AGENCY:** Thrift Depositor Protection Oversight Board.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., announcement is hereby published for a meeting of the Affordable Housing Advisory Board. The meeting, which will be held in two sessions, is open to the public.

**DATES:** The Affordable Housing Advisory Board will hold its meeting in two sessions on April 11 and 12, 1995, in Washington, D.C.:

1. Tuesday, April 11—Session I, Planning.

2. Wednesday, April 12—Session II, General.

**ADDRESSES:** The sessions of the meeting will be held at the following location:

1. April 11—Session I, Planning—Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room 6221, 8:30 a.m. to noon.

2. April 12—Session II, General—Federal Deposit Insurance Corporation, 750 17th Street, N.W., Board Room 6010, 8:30 a.m. to noon.

**FOR FURTHER INFORMATION CONTACT:** Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 808 17th Street, N.W., Washington, D.C. 20232, 202/416–2626.

**SUPPLEMENTARY INFORMATION:** Section 14(b) of the Resolution Trust Corporation Completion Act, Public Law No. 103–204, established the Affordable Housing Advisory Board to advise the Thrift Depositor Protection Oversight Board (Oversight Board) and the Board of Directors of the Federal Deposit Insurance Corporation (FDIC) on policies and programs related to the provision of affordable housing. The Board consists of the Secretary of Housing and Urban Development (HUD) or delegate; the Chairperson of the Board of Directors of the FDIC, or delegate; the Chairperson of the Oversight Board, or delegate; four persons appointed by the Secretary of HUD who represent the interests of individuals and organizations involved in using the affordable housing programs, and two former members of the National Housing Advisory Board. The Board's charter was issued March 9, 1994.

#### Agendas

An agenda will be available at each session of the meeting. At the April 11 planning session, the Board will review the status of five issues: the merger of the RTC and FDIC affordable housing programs, financing strategies and resources, selection of affordable housing assets, expansion of the Housing Opportunity Hotline and participation of community and nonprofit organizations in the affordable housing programs. In addition, the Board will discuss the Congressional rescission of FY'95 appropriations for affordable housing, and there will be a presentation on the RTC Technical Assistance Advisor Program. Members of the public who attend the planning session will be asked to reserve questions or comments until the second session of the meeting on the following day. At the April 12 general session, there will be presentations on the disposition of real estate property with no value, FDIC's oversight of open bank fair lending and FDIC's Massachusetts Foreclosure Avoidance Pilot program. In addition, the Board will receive reports on the unification of the RTC and FDIC affordable housing programs and FDIC 1995 and 1996 housing appropriations. The Board's chair or its Designated Federal Officer may authorize a member or members of the public to address the Board during the public forum portion of the second session. After all reports are given and comments are received from member of the public in attendance, the Board will develop its own recommendations.

#### Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the Affordable Housing Advisory Board prior to or at the April 11 and 12 meeting. Seating is available on a first-come first-served basis for each session of the meeting.

Dated: March 23, 1995.

**Jill Nevius,**

*Committee Management Officer.*

[FR Doc. 95–7628 Filed 3–28–95; 8:45 am]

BILLING CODE 2221–01–M

## DEPARTMENT OF VETERANS AFFAIRS

**[VA Form 4–5579]**

### Information Collection Under OMB Review: Collection of Government Funds Via Credit Card

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collection and supporting documents may be obtained from Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue,

NW, Washington, DC 20420, (202) 523–3412.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collection should be directed to the OMB Desk Officer on or before April 28, 1995.

Dated: March 20, 1995.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

**Extension**

1. Collection of Government Funds Via Credit Card, VA Form 4–5579.
2. Use of this form will allow credit cards to be used to collect funds due the Government. The information collected is needed to properly record collection of the payment and to assess liability to the debtor's credit card account.
3. Individuals or households.
4. 166 hours,
5. 1 minute.
6. On occasion.
7. 10,000 respondents.

[FR Doc. 95–7638 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–P

## Information Collections Under OMB Review

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Department of Veterans Affairs has submitted to OMB the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the type of information collection and the following: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

**ADDRESSES:** Copies of the proposed information collections and supporting documents may be obtained from Trish Fineran, Veterans Benefits Administration (20M30), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–6886.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, Room 10102, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

**DATES:** Comments on the information collections should be directed to the OMB Desk Officer on or before April 28, 1995.

Dated: March 20, 1995.

By direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

**Reinstatement**

1. Application for Ordinary Life Insurance (Age 65), VA Form 29–8485, and Information About Modified Life Insurance Reduction and Replacement Features (Age 65), VA Form 29–8700.
2. These forms are used by the policyholder to apply for replacement insurance for modified life reduced at age 65. The information is used by VA to determine eligibility for the insurance.
3. Individuals or households.
4. 642 hours.
5. 5 minutes.
6. On occasion.
7. 7,700 respondents.

**Reinstatement**

1. Loan and Cash Surrender Values, VA Form 29–5772.
2. The form is used by the insured to request a loan or cash surrender value on his/her insurance. The information is used by VA to initiate the processing of the insured's request for a policy loan or cash surrender.
3. Individuals or households.
4. 5,250 hours.
5. 10 minutes.
6. On occasion.
7. 31,500 respondents.

**Reinstatement**

1. Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran (NSLI), VA Form Letter 29–596.
2. This form letter is used by the administrator, executor, or next of kin of a deceased veteran to support a claim for money in the form of unearned or unapplied insurance premiums due the veteran's estate. The information is used by VA to establish entitlement to the refundable credit.
3. Individuals or households.
4. 78 hours.
5. 15 minutes.
6. On occasion.
7. 312 respondents.

**Reinstatement**

1. HUD/VA Addendum to Uniform Residential Loan Application, VA Form 26–1802a, and Uniform Residential Loan Application, Freddie Mac 65/Fannie Mae Form 1003.
2. The form serves as a joint loan application for VA and the Department of Housing and Urban Development (HUD) insured loans. The form is used by lenders and veterans to apply for VA-guaranty of home loans. The information is used by VA to determine compliance with eligibility requirements.
3. Individuals or households—Business or other for-profit.
4. 28,800 hours.
5. 6 minutes.
6. On occasion.
7. 288,000 respondents.

**Extension**

1. Loan Service Report, VA Form 26–6808.
2. The use of this form will allow VA to service delinquent guaranteed and insured home loans, loan sold, and portfolio loans to determine whether relief measures can be extended to assist the obligor in retaining the property.
3. Individuals or households.
4. 27,083 hours.
5. 25 minutes.
6. On occasion.
7. 65,000 respondents.

**Extension**

1. Request for Identifying Information Re: Veteran's Loan Records, VA Form Letter 26–626.
2. This form letter is used to notify a correspondent that additional information is needed in order to identify and associate their previous correspondence with the correct veteran's loan application or records.
3. Individuals or households.
4. 200 hours.
5. 5 minutes.
6. On occasion.
7. 2,400 respondents.

**Extension**

1. Request for Organizational Data from Builder, VA Form Letter 26–312.
2. The form letter is completed by builders and sponsors to identify individuals who have controlling, proprietary, or financial interest in their company. The information is used to determine eligibility for participation in the Loan Guaranty Program.
3. Business or other for-profit.
4. 4,000 hours.
5. 30 minutes.
6. On occasion.
7. 8,000 respondents.

[FR Doc. 95–7637 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–P

## Advisory Committee on Cemeteries and Memorials, Notice of Availability of Annual Report

Under section 10(d) of Public Law 92–462 (Federal Advisory Committee Act) notice is hereby given that the Annual Report of the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials for Fiscal Year 1994 has been issued. The Report summarizes activities of the Committee on matters relative to programs, policies and accomplishments which have been made, and the identification of areas where further study and improvements are required. It is available for public inspection at two locations:

Federal Documents Section, Exchange and Gift Division, LM 632, Library of Congress, Washington, DC 20540
and
Department of Veterans Affairs, National Cemetery System, 810 Vermont Ave., NW., Washington, DC 20420

Dated: March 16, 1995.

By Direction of the Secretary.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 95–7636 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–M

## Advisory Committee on Prosthetics and Special-Disabilities Programs; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs will be held Friday, May 5, 1995, at VA Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting will be held in Room 230 and commence at 8:30 a.m. and adjourn at 4 p.m.

The purpose of the Advisory Committee is to advise the Department on its prosthetics programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Advisory Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

The meeting is open to the public to the capacity of the room. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (117C), phone (202) 535–7293, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to April 28, 1995.

Dated: March 13, 1995.

**Heyward Bannister,**

*Committee Management Officer.*

[FR Doc. 95–7639 Filed 3–28–95; 8:45 am]

BILLING CODE 8320–01–M

## Privacy Act of 1974: New System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. ''Privacy Act of 1974; New System of Records; Workers' Compensation/Occupational Safety and Health Management Information System—VA (86VA058)''.

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 et seq.) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. Pursuant to 5 U.S.C. 8145 the Secretary, Department of Labor (DOL) is responsible for administering the provisions of the FECA. This responsibility was delegated effective September 27, 1974, to the Director, Office of Workers' Compensation Programs (OWCP) except as FECA pertains to the Employees Compensation Appeals Board (5 U.S.C. 8149). DOL published Federal Regulations in 20 CFR, part 10 Employees' Benefits Claims for Compensation Under the FECA, as amended, defining responsibilities for each employing agency to case manage each of their claims and return claimants to duty as soon as possible. Pursuant to 5 U.S.C. 8147, each employing agency is responsible for refunding all compensation benefit costs for their claimants, incurred by OWCP, to DOL.

VA will use this system of records to carry out its statutory duty to case manage each of its claims. Employees with OWCP case management and safety responsibilities will be able to view and download all information pertaining to claimants under each employing facility's management control. The information in this system of records will provide OWCP case managers with the most current information available on job-injured/disease claims. The Inspector General's audit of VA's OWCP program in 1993, concluded that employing facilities were not effectively managing the program. The information in this data base was developed to provide field facilities with assistance for more aggressive case management. The system will also be used to produce statistical management reports and monitor the case management performance of each VA employing facility. Additionally, the Workers' Compensation/Occupational Safety and Health Management Information System—VA (WC/OSH MIS) data base will be used by VA's Office of Occupational Safety and Health to manage the VA Safety Program. Statistical reports will identify the source and type of injuries occurring at each facility. The reports will allow Safety officials to focus on the correction and prevention of additional injuries/diseases. Accident prevention lowers the OWCP costs through cost avoidance.

The information maintained in this system of records in hard copy and magnetic media storage devices will include the claimant's name, address, social security number, date of birth, grade, salary, telephone number, OWCP's case adjudication status (approved or denied, waiting adjudication, file sent to Hearings and Review for decision), accepted medical condition(s), compensation paid (amount and time period covered), medical bills paid (name of physician, hospital or health facility, type of treatment, date of treatment, amount paid, amount paid for medical equipment, and rehabilitation expenses), continuation of pay (COP) authorized or denied, dates COP is paid, number of days of COP, and total amount of all expenses paid.

Access to the Workers' Compensation/Office of Safety and Health Management Information System is restricted to Human Resources Management and Safety Officials. Paper records are maintained in a secured area with limited access. Access to data by means of on-line (query) or down-loading with a personal computer is restricted to authorized employees by means of unique user identification and passwords. User identifications will be issued by the Chief, Human Resources Management at each employing facility. The Chief, Human Resources Management will issue user identifications to the safety official and OWCP officials at their respective facilities.

VA will have six routine uses for records maintained in this system.

First, disclosure may be made to any third-party or representative acting on claimant's behalf until the claim is adjudicated, all appeal rights are resolved, and the case file is closed.

Second, in the event that records in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Third, disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Fourth, disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

Fifth, disclosure may be made to any source from which additional information is needed in order to properly make case management decisions.

Sixth, disclosure of statistical data may be made to other VA facilities and Federal agencies.

A ''Report to Public a **Federal Register** Notice of a New System of Records'' and an advance copy of the new system notice have been provided to the Chairpersons of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), as required by the Privacy Act, 5 U.S.C. 522(r), and guidelines issued by OMB (59 FR 37916), July 25, 1994. (The Law and the guidelines specifically provide for submitting the report to the House Committee on Government Operations; However, the House has renamed the Committee as the Committee on Government Reform and Oversight.)

Release of information from these records will only be made in accordance with the provisions of the Privacy Act of 1974 for investigatory, judicial, and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records and that specific routine uses for transfer of this information are appropriate.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed system of records to the Secretary of Veterans Affairs (058A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All relevant material received before April 28, 1995, will be considered. All written comments received will be available for public inspection in Room 119 at the above address only between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until May 8, 1995.

If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the routine use statements included herein are effective April 28, 1995.

Approved: March 10, 1995.

**Jesse Brown,**

*Secretary of Veterans Affairs.*

**86VA058**

**SYSTEM NAME:**

Workers' Compensation/Occupational Safety and Health Management Information System—VA (WC/OSH–MIS).

**SYSTEM LOCATION:**

Department of Veterans Affairs (VA) Austin Automation Center, Austin, Texas, and information in the data base can be viewed and down-loaded by employees with workers' compensation case management and safety responsibilities at VA employing facilities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All VA and former VA employees who have incurred a job-related injury/disease and have an active claim file with the Office of Workers' Compensation Programs (OWCP).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in the system include the OWCP quarterly injury/disease chargeback reports, weekly Case Management File (CMF) reports, weekly Automated Compensation Payment System (ACPS) reports, weekly Bill Payment System (BPS) reports, data on VA's continuation of pay (COP) costs, and some elements from the Personnel and Accounting Integrated Data System—VA. The computer data base records will include the claimant's name, address, social security number, date of birth, grade, salary, telephone number, OWCP's case adjudication status (approved or denied, waiting adjudication, file sent to Hearings and Review for decision), accepted medical condition(s), compensation paid (amount and time period covered), medical bills paid (name of physician, hospital or health facility, type of treatment, date of treatment, amount paid, amount paid for medical equipment, and rehabilitation expenses), COP authorized or denied, dates COP is paid, number of days of COP, and total amount paid.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 91–596, 5 U.S.C. 8101 et seq. and Federal Regulations 20 CFR part 10, 29 CFR part 1960, and 5 CFR ch. 1, part 353.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. Disclosure may be made to any third-party or representative acting on claimant's behalf until the claim is adjudicated, all appeal rights are resolved, and the case file is closed.

2. In the event that records in this system of records indicate a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

4. Disclosure may be made to NARA (National Archives and Records Administration) in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

5. Disclosure may be made to any source from which additional information is needed in order to properly make case management decisions.

6. Disclosure of statistical data may be made to other VA facilities and Federal agencies.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper documents and computer storage media.

**RETRIEVABILITY:**

Information is retrievable by the name of VA claimant, social security number, and OWCP case file number.

**SAFEGUARDS:**

Access to the WC/OSH–MIS data base is restricted to Human Resources Management and Safety Officials. Paper records are maintained in a secured area with limited access. Access to data is by means of on-line (query) data base or downloading with a personal computer and is restricted to authorized employees by means of unique user identification and passwords.

**RETENTION AND DISPOSAL:**

Records are destroyed thirty years after OWCP closes the claimant's case file. Records are destroyed by shredding or burning paper documents, or by erasing the magnetic media.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Assistant Secretary for Human Resources Management (05), 810 Vermont Avenue, NW, Washington, DC 20420.

**NOTIFICATION PROCEDURES:**

Employees desiring to know whether this system of records contains a record pertaining to him or her, must submit a written request to the VA Human Resources Management Office of employment or to the office of last employment for former employees.

**RECORD ACCESS PROCEDURES:**

Employees seeking information regarding access to and contesting of VA records may write, call, or visit the VA Human Resources Management Office of employment.

**CONTESTING RECORD PROCEDURES:**

See record access procedures above.

**RECORDS SOURCE CATEGORIES:**

Data tapes furnished by OWCP, data elements from the Personnel and Accounting Integrated Data System–VA, VA continuation of pay (COP) data, and VA employees.

[FR Doc. 95–7640 Filed 3–28–95; 8:45 am]

**BILLING CODE 8320–01–M**

Federal Register

Wednesday
March 29, 1995

# Part II

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 119, et al.**

**Commuter Operations and General Certification and Operations Requirements; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 119, 121, 125, 127, and 135**

**[Docket No. 28154; Notice No. 95–5]**

## Commuter Operations and General Certification and Operations Requirements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This proposed rule would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger-seating configuration of 10 to 30 seats and those conducting scheduled passenger-carrying operations in turbojets regardless of seating configuration. The proposed rule would revise the requirements concerning operating certificates and operations specifications. The rule would also propose certain management officials for all operators under parts 121 and 135. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board (NTSB), testimony at Congressional hearings, and accident statistics. The proposed rule is intended to increase safety in scheduled passenger-carrying operations and to clarify, update, and consolidate the certification and operations requirements for persons who transport persons or property by air for compensation or hire.

**DATES:** Comments must be received on or before June 27, 1995.

**ADDRESSES:** Send or deliver comments on this notice in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Room 915G, Docket No. , 800 Independence Avenue SW., Washington, DC 20591. Comments may also be submitted to the Rules Docket by using the following Internet address: nprmcmts@mail.hq.faa.gov Comments must be marked Docket No. . Comments may be examined in the Rules Docket between 8:30 a.m. and 5 p.m. on weekdays, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Alberta Brown, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8248.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of this proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. .'' The postcard will be dated and time stamped and returned to the commenter. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–230), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

### Outline of NPRM

I. Introduction
II. History
III. The Problem and Recent FAA Actions
  A. Accident Rate for Commuter Operations
  B. Public Perception
  C. Congressional Hearings
  D. NTSB Study
  E. Recent FAA Actions
IV. The Proposal
V. Major Issues
  A. Applicability
  B. Aircraft Certification
  C. Flight Time Limits and Rest Requirements
  D. Age 60 Rule
  E. Dispatch System
  F. Major Equipment Items
  G. Airports
  H. Proposed Effective Date and Compliance Schedule
VI. Discussion of Specific Proposals
  A. Part 119 Summary
  B. Part 121 Discussion
  1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers
  2. Subpart F—Approval of Routes: Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators
  3. Subpart G—Manual Requirements
  4. Subpart H—Airplane Requirements
  5. Subpart I—Airplane Performance Operating Limitations
  6. Subpart J—Special Airworthiness Requirements
  7. Subpart K—Instrument and Equipment Requirements
  8. Subpart L—Maintenance, Preventive Maintenance, and Alterations.
  9. Subpart M—Airman and Crewmember Requirements
  10. Subpart N and O—Training Program and Crewmember Qualifications
  11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers
  12. Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers
  13. Subpart R—Flight Time Limitations Flag Air Carriers
  14. Subpart S—Flight Time Limitations: Supplemental Air Carriers and Commercial Limitations
  15. Subpart T—Flight Operations
  16. Subpart U—Dispatching and Flight Release Rules
  17. Subpart V—Records and Reports
  C. Proposed Part 119 Explanation
VII. Regulatory Evaluation Summary
VIII. The Proposed Amendment

### Background

### I. Introduction

Currently, scheduled passenger-carrying air transportation operations under common carriage are conducted under the Federal Aviation Regulations (FAR) of 14 CFR part 121 and part 135. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of over 30 seats or more than 7,500 pounds payload capacity are conducted under part 121. Scheduled passenger-carrying operations in airplanes with passenger-seating configurations of 30 seats or less or 7,500 pounds or less payload capacity are conducted under part 135. Part 121, which provides the safety requirements for all major air carriers (as well as for any operator conducting scheduled or nonscheduled operations with airplanes configured with more than 30 passenger seats), is generally considered to have more restrictive requirements than part 135. The differences between parts 121 and 135

reflect differences in the size of the aircraft and the scope of the operations. Part 135 is considered to provide a level of safety comparable to part 121; however, the FAA continually evaluates changes in the industry and the aviation environment that may necessitate upgrading the regulations in order to continue to fulfill the agency's statutory requirement.

**II. History**

For most of the history of aviation safety regulations, one dividing line served to separate the regulations that determined airplane design and type certification, flight operations, maintenance, pilot, and economic requirements. The dividing line between these sets of regulations was first established in 1953 and was based on the maximum certificated takeoff weight (MCTW) of an airplane.

Airplanes with an MCTW of 12,500 pounds or less were small airplanes and were operated under part 135. Airplanes with an MCTW of more than 12,500 pounds were considered large airplanes. Large airplanes, which were generally designed to carry 20 or more passengers, were used for scheduled air transportation while small airplanes, which were generally designed to carry fewer than 10 passengers, were used for on-demand air taxi service. The Civil Aeronautics Board (CAB) used the large/small dividing line to separate major airline companies, who were required to obtain a Certificate of Public Convenience and Necessity (CPCN) from the CAB in order to operate in interstate commerce as a common carrier, from on-demand air taxi operators, who were exempted from obtaining a CPCN.

During this time, the CAB issued only a small number of CPCN's, and the companies that received them became household names to the air traveling public (Eastern, American, Delta, Pan Am, TWA, etc.). In contrast, on-demand air taxi operators numbered in the thousands.

Before 1970, the typical air taxi operator was a fixed-base operator, usually at a small airport, that owned fewer than five airplanes and provided on-demand air transportation as well as other services, such as training new pilots and selling and renting small airplanes. Typically, the air taxi portion of such an operator's business was a small part of that business and rarely involved any scheduled operations.

Beginning in the late 1960's, airplane manufacturers began to design and build small airplanes that were capable of carrying more than 10 passengers, and pushed the passenger capacity of the small airplanes higher until it approached 20 passengers. As these airplanes became available, some air taxi operators began to offer services that resembled the services of the major airlines. There was an economic incentive for these new commuter-type operators to buy these airplanes and operate under the less restrictive requirements of part 135. As part 135 operators acquired more of these airplanes, the nature of some part 135 operations changed dramatically from the traditional small airplane air taxi operation to a scheduled commuter operation. Although the number of these scheduled operators grew, they still remained a small percent of the thousands of air taxi operators.

In 1978, as a result of the Airline Deregulation Act, the airline industry was deregulated economically, with air carriers given more freedom to enter and exit markets without prior government economic approval. This caused major changes throughout the airline industry. One of the most significant changes was the ability of the major carriers to eliminate service to smaller points that proved to be uneconomical for the size of aircraft they operated and to be replaced at those points by the smaller commuter carriers. Under this system, the major part 121 air carriers provided service to the large metropolitan airports, while the growing class of scheduled part 135 air carriers provided service between the smaller communities as well as feeder service from the smaller points to the larger cities to connect with the major carriers' operations. This became commonly known as the 'hub and spoke' system. The most significant effect of these changes was that the traditional two categories of operations had been replaced by three categories of operations. The new category contained scheduled commuter operations that were neither traditional air taxis nor traditional major air carriers.

Also in 1978, in response to the Airline Deregulation Act, the FAA reissued part 135 standards to upgrade commuter and air taxi safety requirements and make them more like part 121. At that time part 135 operators were required to meet more stringent requirements in several areas, including weather reporting, flightcrew training, maintenance, and qualifications for management personnel.

Since 1978, the FAA has issued a number of separate rule changes to further align part 135 safety requirements. Certain part 135 operators (depending on type of engines and passenger-seating capacity) are now required to have cockpit voice recorders, flight data recorders (except some 10- to 19-seat airplanes), and ground proximity warning systems.

Despite the FAA's realignment of part 135, differences between the regulations still exist. The economic incentive to operate under part 135 still exists because the requirements in part 135 are still less restrictive than the part 121 requirements in most instances.

For the remainder of this document the following terms are used in the following ways. ''Commuter,'' ''commuter airline,'' and ''commuter operator'' means those operators and scheduled passenger-carrying operations conducted under part 135 in airplanes with a passenger-seating capacity of 30 or fewer seats. This is the FAA's current use of the word ''commuter,'' which does not include scheduled passenger-carrying operations conducted under part 121 in airplanes with a seating capacity of 31 to 60 seats. The Department of Transportation (DOT) uses the term ''commuter'' more broadly to include all scheduled passenger-carrying operations conducted in airplanes with a passenger-seating capacity of 20 to 60 seats. The term ''regional,'' which is used by industry to refer to short-haul, passenger-carrying, scheduled operations conducted under part 121 or part 135, is not generally used by the FAA and is not used in this document.

**III. The Problem and Recent FAA Actions**

Recent part 135 commuter accidents have focused public, government, and industry attention on the safety of commuter operations. While the safety level of part 135 operations has continued to improve, accident data, public perception, and recent government inquiries show a need for additional measures.

*III.A. Accident Rate for Commuter Operations*

The airline industry that uses airplanes with a passenger-seating capacity of 60 or fewer seats to conduct scheduled operations under parts 121 and 135 is an essential part of the air transportation network in the U.S. These airlines now fly more than all airlines did in 1958. In 1993, over 50 million passengers, 12 percent of the total passenger flights in the country, were flown by these airlines. Half of these passengers were flown in part 135 operations, i.e., in aircraft with 30 or fewer seats.

The typical airplane flown in commuter operations under part 135 is a turbopropeller-powered 19-seat airplane such as the Brazilian-made

Embraer Bandeirante, the German-made Dornier 228, the British-made BAE 31 Jetstream, and the U.S.-made Fairchild Metro and Beechcraft 1900. These modern airplanes have advanced electronics and are type certificated for two pilots. They cruise at 250 knots at an altitude of 25,000 feet. Over the past two decades the safety record of part 135 commuters has greatly improved. The accident rate per 100,000 departures in 1993 was one-fourth the accident rate in 1980. However, the accident rate for commuter airlines operating under part 135 continues to be higher than the rate for domestic part 121 airlines. In the past 2 years, several commuter airline accidents occurred that attracted media and public attention and caused government and industry officials to scrutinize the safety system for commuter operations under part 135. A summary of the most pertinent of these accidents follows:

- On December 1, 1993, a Jetstream 31, operated by Express II (operated as Northwest Airlink), crashed at Hibbing, Minnesota, on an instrument approach, killing 18 people. A major factor in the accident was the captain's failure to follow standard operating procedures in his decision to use an excessive descent rate during the approach.
- On January 7, 1994, a Jetstream 41, operated by Atlantic Coast Airlines (as United Express), stalled while executing an instrument landing system approach to the Port Columbus Airport in Columbus, Ohio. Of the eight people on board, five died and three survived. The National Transportation Safety Board (NTSB) found that the flightcrew flew an unstabilized approach, failed to monitor airspeed, improperly responded to the stall warning, and allowed the airplane to stall.
- On December 13, 1994, a Jetstream 3200, operated by Flagship Airlines (as American Eagle), crashed at Raleigh-Durham, North Carolina, on an instrument approach, killing the two pilots, and 15 of the 18 passengers. The cause of the accident is not yet known.

These accidents involved commuter flights conducted under part 135. Media attention to these and other commuter-type accidents has increased concerns about the safety of these operations.

*III.B. Public Perception*

With the increase in the number of flights to many communities conducted in airplanes with a seating capacity of 30 seats or less, some members of the public are questioning whether they are receiving an appropriate level of safety in small propeller-driven airplanes as compared to the level of safety they receive in large jets. This public concern is partly a result of the integration of commuter carriers with major airlines under an arrangement known as code-sharing. The term ''code-sharing'' refers to the computerized airline reservation system that lists a commuter flight in the reservation system under the same code used by a major carrier. Code sharing arrangements range from marketing agreements to ownership of the code-sharing partner by the major carrier. A passenger who books with a major carrier may have a leg of the flight automatically booked with a smaller commuter affiliate of the major carrier. The first time the passenger realizes this is during boarding the smaller airplane. Despite the practice of the affiliate commuter using a similar uniform and airplane paint scheme as the major airline, the passenger realizes that the type of service has changed: there is a stairway off the tarmac rather than a ramp at the terminal; there is less leg room and less room for carry-on baggage; there is more noise; the flight is at a lower altitude; etc.

With the media attention to recent commuter accidents, the passenger may also believe that the flight involves more risk because the smaller airplane and its operation may not have to meet the same safety standards. Most passengers probably do not realize that some differences in standards are necessary because of differences in the airplane and operation and that some of the accidents that are categorized by the media as ''commuter'' accidents occurred in flights that were being conducted under part 121; that is, in airplanes with over 30 passenger seats.

As stated earlier in this notice, the differences in regulations were initially based on differences in the types of operations and differences in the size of airplanes; these differences in many instances still apply. One would not expect, nor would it be feasible, for a 6-seat airplane operated as an on-demand air taxi to meet all of the requirements that a scheduled 350-seat transport category jet must meet. There are inherent differences between the 6-seater and the large jet. The 6-seater cannot accommodate all the safety equipment or redundant systems of a large jet. On the other hand, the 6-seater may fill a need by being more maneuverable and capable of using smaller airports, etc.

While some of the differences in the requirements between part 121 and part 135 reflect differences in the size and operation of the airplanes, other differences do not, such as how many hours a pilot may fly, what emergency equipment must be carried, and what procedures must be followed in icing conditions. Some differences between the two sets of regulations must be maintained while others can be eliminated to improve the safety of commuter operations.

*III.C. Congressional Hearings*

On February 9, 1994, Congress held hearings on the adequacy of commuter airline safety regulations. The purpose of the hearings was to determine if FAA safety regulations should be modified to establish a single standard for all scheduled operations regardless of airplane size. Testimony was presented by the FAA Administrator, the Chairman of the NTSB, the president of the Regional Airline Association, the president of the Airline Pilots Association, the president of the Airline Dispatchers Federation, and the director of the Aviation Consumer Action Project.

Most testimony supported the view that the requirements for 10- to 30-seat commuter operations should be as restrictive as those for airplanes with 31 or more seats under part 121; that safety equipment such as flight data recorders, ground proximity warning systems, and Traffic Alert and Collision Avoidance System (TCAS) should be required on airplanes used in commuter service; that pilot training should be the same in part 135 commuter operations as is in part 121; and that part 135 commuter operations should use a dispatch system.

*III.D. NTSB Study*

In November 1994, the NTSB published a study on commuter airline safety. (National Transportation Safety Board Safety Study: Commuter Airline Safety, NTSB/SS–94/02.) The study was based on the NTSB's analysis of accident investigations and previous studies, on a recent site survey of airline operations and policies conducted at a representative sample of commuter airlines, and on information obtained from a public forum on commuter airline safety convened by the NTSB.

The findings of the study relevant to this rulemaking are as follows:

(1) The commuter air carrier industry has experienced major growth in passenger traffic and changes in its operating characteristics since 1980. There has been a trend toward operating larger, more sophisticated airplanes, and many carriers have established code-sharing arrangements with major airlines. The regulations in part 135 have not kept pace with many of the changes in the industry.

(2) Pressure on part 135 pilots to accomplish several tasks, such as obtaining weather information,

calculating minimum fuel load, and calculating weight and balance, between flights in short periods of time increases the risk of critical mistakes that could jeopardize the safety of flight.

The key NTSB recommendations based on these findings are to revise the FAR such that:

- All scheduled passenger service conducted in airplanes with 20 or more passenger seats would be conducted according to the provisions of 14 CFR part 121.
- All scheduled passenger service conducted in airplanes with 10 to 19 passenger seats would be conducted in accordance with 14 CFR part 121, or its functional equivalent, wherever possible.

The FAA published all of the NTSB recommendations in the **Federal Register** and requested public comments on the recommendations (59 FR 63185, December 7, 1994). Thirty-nine comments were received. Commenters included small air carriers, trade associations, aircraft manufacturers, airport operators, and individuals.

Of the comments relevant to this rulemaking, most generally support expanding the operational rules of part 121, except for flight time limitations, to commuter operations under part 135. Several commenters express concern about specific requirements that might apply. Commenters had considerable reservations about applying certain part 121 equipment requirements to smaller airplanes. The FAA considered all of the comments in developing this proposed rule.

*III.E. Recent FAA Actions*

Recently the FAA issued a number of proposed rules that would increase the safety of commuter operations under part 135. In August 1992, the FAA proposed a new part 142 that would contain certification and operating rules for training centers. The purpose of that rulemaking is to provide standardized quality pilot training for individuals, operators, and air carriers and to increase the accessibility of flight simulators and flight training devices for pilot training. (57 FR 35888, August 11, 1992.) The FAA intends to issue a final rule by May 1995.

In July 1993, the FAA proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes by upgrading the requirements for seat restraint systems and increasing the downward inertia load factor for items of mass within the cabin. The proposal also would upgrade the flammability standards for seat cushions in airplanes used by commuter operators. These proposed amendments would improve the occupant protection provisions for these types of airplanes and would provide seat restraint requirements and flammability standards commensurate with those for transport category airplanes. (58 FR 38028; July 14, 1993) The FAA received an additional report on commuter airplane accident data analysis in October 1994. Based on the fact that General Aircraft Manufacturers Association had requested additional information be made available before the NPRM was published, a notice to reopen the comment period was issued October 28, 1994, and published November 4, 1994. The reopened comment period closed March 4, 1995.

In December 1994, the FAA proposed to revise the training and qualification requirements to require certificate holders that conduct commuter operations under part 135 with airplanes requiring two pilots or having 10 or more passenger seats to comply with the part 121 training, checking, and qualification requirements. The proposed rule would also mandate crew resource management training for pilots, dispatchers, and flight attendants in part 121. (59 FR 64272, December 13, 1994) The FAA intends to issue a final rule by mid 1995.

While these measures along with the earlier amendments to part 135 continue to make the requirements between parts 121 and 135 similar, some differences remain. Eliminating these differences would increase safety in commuter operations.

**IV. The Proposal**

The FAA proposes in this rulemaking to eliminate the differences in requirements for scheduled passenger operations using airplanes with a passenger-seating configuration of 10 or more. While a distinction still exists between large air carriers and on-demand air taxis, the FAA believes that the distinction should no longer be maintained for scheduled passenger operations and that all scheduled operations in airplanes with a passenger-seating configuration of 10 or more should comply with part 121 requirements. In addition, the FAA proposes that all turbojets used in scheduled passenger-carrying operations under part 135 comply with part 121 requirements regardless of seating capacity.

The FAA Administrator, when prescribing safety regulations, is required by statute to consider ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest.'' (49 U.S.C. 44701(d)(1)(A)) The FAA considers that the most appropriate way to meet this statutory mandate and to reduce the accident rate for current part 135 commuters operating airplanes with 10 to 30 passenger seats is to require scheduled passenger operations in those airplanes to meet most of the minimum requirements of part 121 that are relevant to the type of operation and size of the airplane.

Typically, the FAA revises safety regulations when specific events (such as accidents or incidents) indicate a need to raise or adjust certain standards. In most instances when standards are revised the FAA can discuss specific reasons for each change and can estimate whether each change is cost beneficial. This proposed rulemaking does not lend itself to this type of item by item justification and cost benefit analysis because it is difficult to precisely state which rule, in isolation from other rules, will prevent an accident or incident.

The numerous proposed revisions that would result from requiring affected part 135 commuter operators to comply with most part 121 requirements cannot readily be evaluated according to specific accidents that would be prevented. The FAA is proposing to apply much of the part 121 requirements on affected part 135 commuters because the agency believes that for those commuters the part 121 approach is appropriate for the type of operations these affected commuters conduct and that the part 121 approach to safety will reduce the accident rate for those operators. The proposed revisions cumulatively would increase the level of safety by requiring certain improvements in flightcrew qualifications, cabin safety equipment and cabin materials, airplane preformance requirements, aircraft operational control, and aircraft maintenance. Some proposed requirements would be simply a necessary part of the overall revision. For example, compliance with the manual requirements of part 121, which are similar to the requirements for affected commuters in part 135, would necessitate developing, producing, and distributing new manuals to reflect the many operational changes that would result. A dispatch system, for example, would require numerous manual changes. Compliance with the manual requirements simply reinforces many safety requirements found elsewhere. It also sets forth the operator's approved procedures for dealing with various situations. The impact of such a change cannot be evaluated separately in terms of accidents prevented, but manual

changes are an essential part of changing a part 135 operation to a part 121 operation.

Other revisions, such as requirements for certain cabin safety equipment and materials, are cumulative; that is, each requirement works as part of the overall change to increase the survivability rate in accidents. Increasing the safety level, including passenger survivability in accidents, is the result of many distinct requirements associated with emergency equipment, crewmember training, passenger briefing, and aircraft interior design. Over time, these improvements in cabin safety have saved many lives, prevented injuries, and prevented damage to property, though it would be almost impossible to determine how many lives have been saved or injuries prevented by any specific requirement. The basic justification for many of these requirements is that they make sense if the goal is to get passengers out of an accident alive.

The same is true for many of the proposed revisions in this rulemaking. The overall approach to regulating under part 121 has proven to provide the highest level of safety in air transportation in the world. Therefore, wherever feasible and logical, the FAA proposes to apply the part 121 approach to the affected commuters in order to increase safety in these operations. Because the accident rate for part 135 commuters using aircraft configured with 10–30 seats is .33 per 100,000 departures, these proposed changes will yield safety benefits that outweigh costs even if the rule is only 75% effective.

## V. Major Issues [See Table 1]

In the development of this rulemaking, the FAA addressed several major issues. One of these issues is applicability, the question of where to draw the dividing line for commuter operations. Currently scheduled passenger-carrying operations in airplanes with a passenger-seating configuration of more than 30 seats must comply with part 121 requirements. Commuter operations under part 135 include scheduled passenger-carrying operations in airplanes of 30 seats or less. While this proposal is drawing the part 121 dividing line at scheduled passenger-carrying operations using airplanes having a passenger-seating configuration of 10 or more, it can be argued that all passenger-carrying airplane operations under part 135, including on-demand air taxi operators, should meet the safety requirements of part 121. Another major issue is aircraft type certification. Some of the airplanes being affected by this rulemaking are type certificated under part 23 requirements for commuter category airplanes (or earlier versions—SFAR 23 or 41), which are in some respects less stringent than the requirements in part 25 for transport category airplanes. The issue is whether all airplanes used by affected commuters should be type certificated under part 25 as transport category airplanes, so that at some point in the future only part 25-certificated airplanes could be used in scheduled passenger-carrying operations. The FAA also considered several issues connected with operational safety. These issues include airmen qualifications, crew flight time requirements, the need for dispatch systems, and compliance with safety equipment requirements. The FAA also considered the issue of operating into and out of airports that do not meet part 139 (Certification and Operations: Land Airports Serving Certain Air Carriers) requirements.

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED

| Effective date of required upgrade is as stated, measured from the rule publication date | Upgrade will apply to all airplanes including new and future certificated | | Upgrade will apply to newly manufactured and future certificated airplanes | Upgrade will apply to future certificated airplanes |
|---|---|---|---|---|
| Issue/Requirement | W/I 12 months | W/I years (#) | After years# | After 3/24/95 |
| 1. Passenger Seat Cushion Flammability | ..... | 2 | ..... | |
| 2. Cargo and Baggage Compartments | ..... | ..... | 4 | |
| 3. Fuel Tank Access Covers | ..... | ..... | ..... | Yes. |
| 4. Lavatory Fire Protection | ..... | 2 | ..... | |
| 5. Access to Emergency Exits | ..... | ..... | ..... | Yes. |
| 6. Ditching Emergency Exits | ..... | 2 | ..... | |
| 7. Two-discharge Fire Extinguishers | ..... | ..... | ..... | Yes. |
| 8. Damage Due to a Failed Prop. Blade | ..... | ..... | ..... | Yes. |
| 9. Bird Strike Damage | ..... | ..... | ..... | Yes. |
| 10. Flammability of Interior Materials | ..... | ..... | 4 | |
| 11. Dynamic Seat Testing | ..... | ..... | ..... | Yes. |
| 12. Floor Proximity Lighting | ..... | 2 | ..... | |
| 13. Redundant Control Systems | ..... | ..... | ..... | Yes. |
| 14. Exterior Emergency Exit Markings | Yes | ..... | ..... | |
| 15. Separation of Pitot Tubes | ..... | ..... | ..... | Yes. |
| 16. Pitot Heat Indication System | ..... | 4 | ..... | |
| 17. Landing Gear Aural Warning | ..... | 2 | ..... | |
| 18. Takeoff Warning System | ..... | ..... | 4 | |
| 19. Self Locking Nuts, Fasteners | ..... | ..... | ..... | Yes. |
| 20. Dual Control System | ..... | ..... | ..... | Yes. |
| 21. Reinforcement Near Propellers | ..... | ..... | ..... | Yes. |
| 22. Exterior Emergency Lighting | ..... | 2 | ..... | |
| 23. Emergency Exit Handle Illumination | ..... | 2 | ..... | |
| 24. Performance & Obs. Clearance | Yes | ..... | ..... | |
| 25. Accelerate-stop Requirements | Yes | ..... | ..... | |
| 26. First Aid Kits-new req., 10–19 Pax | Yes | ..... | ..... | |
| 27. Emergency Medical Kits, 20–30 Pax | Yes | ..... | ..... | |
| 28. Wing Ice Light | Yes | ..... | ..... | |
| 29. Fasten Seat Belt Light | Yes | ..... | ..... | |

TABLE 1.—SUMMARY OF MODIFICATIONS CONSIDERED—Continued

| Effective date of required upgrade is as stated, measured from the rule publication date | Upgrade will apply to all airplanes including new and future certificated | | Upgrade will apply to newly manufactured and future certificated airplanes | Upgrade will apply to future certificated airplanes |
|---|---|---|---|---|
| Issue/Requirement | W/I 12 months | W/I years (#) | After years# | After 3/24/95 |
| 30. Third Attitude Indicator | Yes | | | |
| 31. Airborne Weather Radar | Yes | | | |
| 32. Protective Breathing Equipment | | 2 | | |
| 33. Single Point Inertial Harness | | | 1 | |
| 34. Cabin Ozone Concentration | Yes | | | |
| 35. Retention of Galley Equipment | Yes | | | |
| 36. Transponders | Yes | | | |
| 37. Cargo in Pax Compartment | Yes | | | |
| 38. Two Landing Lights | | | | Yes. |

*V.A. Applicability*

The FAA is proposing that in addition to the operations already covered by part 121, those requirements would apply to all scheduled passenger-carrying operations for compensation or hire in airplanes with a passenger-seating configuration of 10 or more seats and to all scheduled passenger-carrying operations for compensation or hire in turbojet-powered airplanes regardless of seating capacity. (Throughout this document operators of those airplanes may be referred to as ''the affected operators'' or ''the affected commuters'' or words to that effect.) The proposed dividing line would bring most commuter operations now conducted under part 135 into part 121. There are scheduled operations using airplanes of less than 10 passenger seats conducted under part 135 but they typically occur in geographic areas such as Alaska and Hawaii where air transportation is virtually the only feasible mode of transportation and where the operational environment is unlike other air transportation environments. They typically are short-haul operations often carrying only four to six passengers. They resemble air taxi operations more than commuter operations even though the flights are scheduled.

The NTSB, as stated earlier in this preamble, recommends that the FAA revise the regulations so that all scheduled passenger service in airplanes with 20 or more passenger seats be conducted under part 121 and that scheduled passenger service conducted in airplanes with 10 to 19 passenger seats be conducted under part 121 or its functional equivalent wherever possible. This proposal is in line with the NTSB recommendation. While all certificate holders operating airplanes in scheduled passenger-carrying operations with a 10 or more passenger seat configuration would come under part 121, if compliance with certain requirements would not be feasible for certain airplanes, the proposed rule would provide an exception or appropriate alternate standards. (All significant exceptions are specifically covered in the subpart discussion of this preamble.)

The proposed rule would also change the definition of ''scheduled.'' The frequency of operations test of five round trips per week would be eliminated. For a discussion of this issue, see the part 119 discussion in section VI.A of this preamble.

All turbojets used in scheduled passenger-carrying operations, regardless of the seating configuration, would be moved over to part 121 because the typical type of operation of these airplanes warrants a higher safety standard. The FAA believes that currently no turbojets are being used in scheduled passenger-carrying operations under part 135 and that this part of the proposed applicability would not affect any current operator. The FAA seeks comments on whether any turbojets are being operated in scheduled passenger-carrying operations under part 135 and would be affected by this rulemaking.

On-demand air taxi operations are not being included in the proposal because these operations are unlike commuter or major air carrier operations. In addition, the NTSB recommendations and the accidents that spawned this rulemaking involve only commuter operations. Any part 135 certificate holder who conducts on-demand operations could be authorized to conduct its operations under certain part 121 rules [see proposed section 119.21(c)].

Single-engine airplanes are not included in the proposed rule because part 121 applies only to multiengine airplanes. Single-engine airplanes would continue to operate under part 135 whether scheduled or not. However, part 135 would apply to scheduled passenger-carrying operations with airplanes with a seating capacity of 9 or less passenger seats. Therefore, single-engine airplanes with a seating capacity of more than 9 passenger seats would also be prohibited from conducting scheduled operations under part 135. In effect, this rulemaking would require single-engine airplanes with 10 or more passenger seats now operated in scheduled passenger-carrying operations under part 135 to reduce the passenger-seating capacity to 9 or less. Single-engine airplanes that are used in nonscheduled operations in common carriage may continue to operate under the on-demand rules of part 135.

The primary impact on the use of single engine-airplanes would be on operations in Alaska. The FAA specifically requests comments on the potential impact on Alaskan operations. Comments should contain as much factual information as possible and should address possible alternative requirements where the commenter believes that this proposal would cause unjustified limitations on current airplane operations in Alaska.

Rotorcraft operations would remain under part 135; however, additional standards for scheduled passenger-carrying rotorcraft operations may be considered at a future date. Also, additional standards for on-demand air taxi operations may be considered in the future.

*V.B. Aircraft Certification*

Airplanes operated under part 121 are type certificated under part 25 (or a predecessor or are subject to special airworthiness requirements in part 121),

which specifies airworthiness standards for transport category airplanes. Those airplanes operated under part 135 that have a passenger-seating configuration of 20 to 30 seats are also type certificated under part 25. Other airplanes operated under part 135 are permitted to be type certificated under part 23, which specifies airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. Airplanes operated under part 135 and having a passenger-seating configuration of 10 to 19 seats are type certificated under the commuter category airworthiness standards of part 23 (or a predecessor to commuter category airplanes, e.g., SFAR 23, SFAR 41). To be type certificated under the normal category of part 23, the airplane must have a maximum certificated takeoff weight of less than 12,500 pounds. Nothing prohibits a manufacturer from type certificating a 10- to 19-seat airplane under part 25.

An applicant for type certification of a turbopropeller-powered airplane with a passenger seating capacity of 19 or less passenger seats has the option of requesting type certification in either the commuter category under the provisions of part 23 of the FAR or the transport category under the provisions of part 25 of the FAR. Commuter category type-certification standards differ in some areas from the corresponding transport category type-certification standards. In some of those areas, airplanes with a passenger seating capacity of 19 or less passenger seats can achieve the same level of safety without full compliance with the standards of part 25 because of their size, airspeed, or other pertinent parameters.

In the interest of establishing a common approach for all airplanes with 10 or more passenger seats used in scheduled passenger-carrying operations under part 121, the FAA proposes to amend part 121 to require all airplanes for which an application for type certification is made after March 24, 1995, including those with 10- to 19-passenger seats, to be type certificated in the transport category if they are operated in scheduled passenger operations. In order to ensure that this proposed change would not place any undue burden on an applicant for type certification of airplanes that could otherwise be type certificated in the commuter category, the FAA plans to review the standards of parts 23 and 25. If it is determined that the level of safety intended by part 25 could be achieved for those airplanes with 19 or fewer passenger seats through compliance with a particular standard of part 23 in lieu of the corresponding standard of part 25, part 25 would be amended to offer the part 23 standard as an option. Areas identified for further review in this regard include:

§ 25.21(f) Measurement of wind 10 meters above the surface,
§ 25.251 Vibration and buffeting,
§ 25.361 Engine torque,
§ 25.812(b) Exit sign size, and
§ 25.812(l) Inoperative lighting.

The FAA specifically requests comments concerning the above subjects and standards of part 23 commuter category that could be considered as optional standards for part 25. It must be emphasized that any standard adopted as an option must achieve the same level of safety as that currently intended by part 25. Although this study is prompted by the 10- to 19-passenger airplanes that would be operated under part 121, any changes made to part 25 in this regard would apply to type certification of each 10- to 19-passenger airplane in the transport category. Any changes to part 25 that are deemed appropriate would be the subject of a future notice of proposed rulemaking.

The FAA also proposes that airplanes configured with 10- to 19-passenger seats already in service or manufactured in the future under an already existing part 23 commuter category type certificate would have to comply with certain performance and equipment requirements in part 121. Some of these part 121 requirements would be based on part 25 requirements. The FAA proposes specific compliance dates, recognizing that for some airplanes the cost of retrofitting may result in discontinuing use of the airplane and replacing that airplane with a part 25 certificated airplane.

*V.C. Flight Time Limits and Rest Requirements*

Subpart Q of part 121 establishes the flight time limits and rest requirements for flight crewmembers used by domestic air carriers. Flight time limits and rest requirements for flight crewmembers used by flag and supplemental operators are established in subparts R and S, respectively. The comparable limits in part 135 are in subpart F.

In 1985 (50 FR 29319; July 18, 1985), the FAA issued changes to the flight time limitation and rest requirements in parts 121 and 135. These changes clarified and improved the flight time limits and rest requirements in part 121 for domestic operations and for the first time established cumulative weekly, monthly, and annual flight time limitations in part 135. The flight time limitations for scheduled operations under part 135 are less restrictive than those for domestic part 121 operations. Currently under part 121, domestic flight time limits (§ 121.471) are 1,000 hours per calendar year, 100 hours per calendar month, and 30 hours in any consecutive 7 days. Flag flight time limits (§ 121.481) are 1,000 hours per 12-calendar-month period, 100 hours per calendar month, and 32 hours in any 7 consecutive days. Under part 135 (§ 135.265), scheduled passenger-carrying operations must comply with flight time limits of 1,200 hours per calendar year, 120 hours per calendar month, and 34 hours in any 7 consecutive days.

For comparison purposes:

| 121 domestic | 121 flag | 135 |
|---|---|---|
| 1,000 | 1,000 | 1,200 |
| 100 | 100 | 120 |
| 30 | 32 | 34 |

At the time these rules were issued, the FAA believed that the less restrictive cumulative flight time limits of part 135 were acceptable because part 135 operators had not previously had any cumulative limitations and the less restrictive limits allowed for some flexibility for operations that necessitated more flight hours during peak seasons.

There is no longer a justification for the difference in cumulative flight time limits between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135 and applying the less restrictive flight time limits for its part 135 operations. The only significant differences are in the size of the airplanes and the number of passengers, differences that do not justify less restrictive flight time limits for crewmembers.

Therefore, the FAA proposes that the part 121 domestic flight time limits and rest requirements would apply to affected commuter operators when conducting operations within the United States. Affected commuter operators when conducting operations to or from the United States would comply with the flag flight time limitations and rest requirements of subpart R.

Additionally, when these operators use these same airplanes for nonscheduled operations, those airplanes would be required to comply

with supplemental flight time limitations and rest requirements of subpart S of part 121. (See the discussion under part 119 of the preamble for further information on flag and supplemental operations.)

The flight time limitations and rest requirements for flag and supplemental operations were not updated in 1985 when domestic limits were. In view of this, the FAA is developing an NPRM that it plans to issue in mid-1995 that would set forth a common approach to reduce the effects of fatigue on crewmembers in all kinds of operations under parts 121 and 135.

Section 135.261(b)(1) allows scheduled passenger-carrying operations conducted solely within the State of Alaska to comply with the nonscheduled limitations of part 135. This rulemaking does not propose to include an exception for Alaska under part 121 flight time limits. This proposal, in effect, would eliminate this option in Alaska for scheduled passenger-carrying operations of airplanes with 10 or more passenger seats. The FAA believes this is necessary because pilots in Alaska are flying in the same type of scheduled operations as pilots in other parts of the country and are subject to the same fatigue factors. The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

*V.D. Age 60 Rule*

Section 121.383 prohibits a certificate holder from using the services of any person as a pilot on an airplane engaged in operations under part 121 if that person has reached his or her 60th birthday and prohibits any person from serving as a pilot on an airplane engaged in part 121 operations if that person has reached his or her 60th birthday. Part 135 does not have any age limitation. The FAA proposes to impose one age limit on all pilots employed in part 121 operations, including those pilots currently employed in certain part 135 scheduled operations.

The Age 60 Rule, as the requirement has come to be known, has been the subject of considerable attention by the FAA, pilot groups, and others. The FAA is presently considering whether, in the interest of safety, the Age 60 rule should be maintained as is or revised to allow pilots to continue to fly in part 121 operations past their 60th birthday. If the FAA determines that it is appropriate to propose a different age limitation, it will propose to apply the revised limitation to all part 121 operations, including those commuter operations affected by this rule.

*V.E. Dispatch System*

Parts 121 and 135 require operators to exercise operational control over all flights conducted by the operator. Operational control is defined in 14 CFR part 1 as ''the exercise of authority over initiating, conducting and terminating a flight.'' Operational control consists of making decisions and performing activities on a daily basis which are necessary to operate specific flights safely. These activities include, but are not limited to, crew and airplane scheduling, reviewing weather and NOTAM's (Notices to Airmen), and flight planning. Operational control systems vary according to the kind of operation, the complexity of operations, and the means of communication used to exercise operational control. Parts 121 and 135, in pertinent part, provide for three general types of operational control systems: Aircraft dispatch, flight following, and flight-locating systems.

While part 121 requires certificate holders conducting domestic and flag operations to have aircraft dispatch systems to exercise operational control of flights, part 135 does not. A certificate holder that conducts domestic or flag operations under part 121 must use a certificated aircraft dispatcher. The aircraft dispatcher in conjunction with the pilot in command (PIC), establishes the flight plan and monitors the flight from flight release to flight completion. The aircraft dispatcher provides the PIC with information on weather changes, fuel level, weight and balance, and destination airport conditions and capabilities; and, jointly with the PIC, makes decisions affecting the continuing safety of the flight. Under part 135 operations the PIC is typically responsible for these operational control functions. The following sections describe the three types of operational control in the FAR.

*Aircraft Dispatch Systems.* Section 121.395 requires operators subject to the flag or domestic rules of part 121 to use certificated aircraft dispatchers who, along with the PIC, under §§ 121.533 and 121.535, are jointly responsible for exercising operational control over certain aspects of flights. A PIC may not initiate or continue a flight unless both the PIC and the aircraft dispatcher controlling the flight agree that the flight can be conducted safely as planned under reported and forecast conditions. The FAR require that both the aircraft dispatcher and the PIC sign a dispatch release. Section 121.463 requires that each aircraft dispatcher be familiar with all essential operating procedures for that segment of the operation over which he or she exercises dispatch jurisdiction. Before dispatching any flight, an aircraft dispatcher must be thoroughly familiar with the en route and terminal weather conditions and the status of communications, navigation, and airport facilities. Section 121.601 requires that the aircraft dispatcher provide the PIC with a preflight briefing on each of these items. An aircraft dispatcher must monitor the progress of each flight under the dispatcher's control until the flight has landed or passed beyond the dispatcher's area of control or until the dispatcher is relieved by another dispatcher. Flight monitoring, at a minimum, must include monitoring the flight's fuel supply, remaining flight time, terminal weather trends, en route winds and weather, and the status of airport and navigational facilities. Section 121.99 requires that rapid and reliable two-way radio communications between each flight and the dispatcher be available at any time in the flight. Once initiated, a flight must continue to its destination as planned and in accordance with the conditions of the dispatch release unless, in the opinion of either the PIC or the dispatcher, it is unsafe to do so. In such cases, the dispatch release must be amended. Section 121.557 authorizes the PIC to deviate from the conditions of the dispatch release to the extent necessary for safety in an emergency. When the PIC exercises this authority, the regulation requires the PIC to keep both air traffic control (ATC) and dispatch fully informed of the progress of the flight.

*Flight Following Systems.* Operators subject to part 121 supplemental rules (charter operations, all-cargo operations, etc.) are not required to have dispatch systems because such systems are impractical for operators who do not fly to the same destinations on a scheduled basis. Section 121.537 requires operators who are subject to the supplemental rules of part 121 to place the major responsibility for operational control of flights with the director of operations. The director of operations may delegate authority for the control of the flight to other employees (known as flight followers). Flight following personnel are not required to be certificated aircraft dispatchers. Under a flight following system, PIC's are responsible for preflight planning and for the safe conduct of the flight. A PIC may not begin a flight unless the PIC is thoroughly familiar with reported and forecast weather conditions on the route

to be flown and has obtained all available reports on airport conditions and irregularities of navigation facilities that may affect the safety of the flight. A flight release specifying the conditions under which the flight will be conducted is prepared and signed by the PIC before the flight may depart. Section 121.597(b) prohibits the PIC from signing the release until the director of operations or the flight follower, if delegated the authority, concurs that the flight can be safely conducted as planned. During the flight the PIC must obtain any additional available information on meteorological conditions and navigational and airport facilities that may affect the safety of the flight. The operator is responsible for ensuring that the PIC has the means to obtain this information. The operator is not required to provide the capability for inflight radio communications between the director of operations or flight follower and the PIC. The director of operations is responsible for monitoring the progress of each flight from its point of origin to its arrival at the destination.

*Flight Locating Systems.* While § 135.77 requires that each operator exercise operational control, part 135 does not specify a particular means of exercising continuous operational control of all aspects of the flight. Since part 135 operations range from visual flight rule operations in simple airplanes to extended overwater operations in jet transport airplanes, the regulations allow the operator to use a means that is appropriate to the operating conditions. Part 135 does not require operators to prepare a formal release authorizing a specific flight. Section 135.69 requires that the operator restrict or suspend operations when either the PIC or the operator becomes aware of a hazardous condition. The operator's manual must provide for adequate briefing and trip planning procedures to ensure that all safety requirements are fulfilled. Part 135 operators commonly delegate release authority to PIC's. Section 135.79 requires that each operator maintain at least a flight locating system for those flights for which an FAA flight plan is not filed. The system must provide for the timely notification of an FAA facility or a search and rescue facility if an airplane is overdue or missing. Part 135 operators may require PIC's to file ATC flight plans as a means of complying with this requirement. Part 135 operators are not required to have the capability to contact flights while they are airborne. Part 135 does not specify the qualifications or titles of individuals authorized to release or follow flights.

*FAA Dispatch Proposal.* For scheduled passenger-carrying operations, the safest means for maintaining operational control is an aircraft dispatch system. This allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. It also provides the pilot with verification of pilot calculations related to weight and balance, fuel load, etc., since these detailed calculations are also performed by the aircraft dispatcher. Weather changes en route, airport and airport facility, and other essential information is made available to the pilot through the dispatcher. If an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow.

While the safety benefits of a dispatch system are significant, there is substantial cost involved in establishing a dispatch system because dispatchers must be hired and trained and dispatch centers and equipment must be available for communicating. In addition, some part 135 operators who would be subject to part 121 requirements as a result of this rulemaking already use an aircraft dispatch system.

The Congressional hearings on commuter operations included presentations directly related to requiring dispatchers for commuter operations conducted under part 135. Arguments for part 135 dispatchers included the following: (1) NTSB said that a lack of direct management oversight and inexperienced crews may have contributed to some part 135 commuter accidents and that a dispatcher may provide an additional safety enhancement; (2) the Airline Dispatchers Federation (ADF) said that dispatchers can prevent accidents by assisting the pilot with preflight planning and providing safety information throughout flights. ADF added that using dispatchers would not be costly because carriers would save fuel. They also said that sufficient staff may already exist to handle dispatcher duties. ADF representatives testified that pilots should fly the airplane and let dispatchers take over some of the traditional pilot workload (e.g., flight planning to include fuel planning, weather checks, weight and balance calculations).

Contrary to ADF's suggestion about dispatchers taking over some of the pilots' work load, the FAA believes that, although the aircraft dispatcher initially performs certain calculations, the pilot is still required to check the dispatcher's calculations before flight. The redundancy of the dispatch system provides assurance that the calculations are accurate. This is especially important in fast turn-arounds, common in commuter operations.

The NTSB safety study on commuter airline safety (as cited earlier) reports that for 20 commuter airlines that were surveyed: 4 provide licensed dispatch services (these 4 also conduct part 121 scheduled operations); 16 provide weather information to the pilot at each station through computerized services, station agents, or ramp personnel; at 19 airlines, the pilots calculate weight and balance for each flight; and at 11 airlines, the pilots are responsible for calculating the minimum fuel load for each flight.

The NTSB found that pressures on part 135 pilots to accomplish several tasks—such as obtaining weather information, calculating minimum fuel load, and calculating weight and balances—between flights in short periods of time increase the risk of critical mistakes that could jeopardize safety.

Pilot responses to questions in the survey about dispatch services and comments made during a public forum conducted by NTSB indicated that it was extremely difficult for the pilots to accomplish the tasks correctly in the amount of time they had during turn-arounds. Pressure to perform the tasks rapidly is most extreme for newly employed captains and first officers who are concerned that their performance evaluations will suffer if they are responsible for flight delays. Pilots reported that they would feel more confident if their weight and balance and fuel calculations were verified by a trained and licensed dispatcher.

The NTSB safety study recommendations include requiring principal operations inspectors to periodically review air carrier flight operations policies and practices concerning pilot tasks performed between flights to ensure that carriers provide pilots with adequate resources (such as time and personnel) to accomplish those tasks. (NTSB recommendation A–94–193)

To correct these identified problems, the proposed rule would require all affected commuters to meet all part 121 dispatch requirements, including dispatcher qualification requirements, recordkeeping, and flight release requirements. Affected commuters who would conduct some nonscheduled flights under part 121 supplemental rules could use a flight following method for the nonscheduled flights.

The FAA does, however, recognize that Alaskan operations pose certain unique problems, and the FAA requests comments on alternatives that could be considered.

*V.F. Major Equipment Items*

Part 121, subpart K, contains certain equipment requirements for airplanes operated under that part. Some of these items of equipment are considered major because they are relatively costly to buy and install and they provide major safety benefits. These items include flight data recorders (§§ 121.343 and 135.152), traffic alert and collision avoidance system (§§ 121.356 and 135.180), airborne weather radar (§§ 121.357 and 135.173), low altitude windshear (§ 121.358), and cockpit voice recorders (§§ 121.359 and 135.151). Of the above items, airborne weather radar is the only equipment requirement that would be added for 10- to 19-passenger-configurated airplanes under this proposal. Each major equipment requirement affected or not affected by the proposed rule is discussed below.

*Flight Data Recorders (FDR).* FDR are required in part 121 for all large airplanes. Stated simply, the regulations require operators to equip certain airplanes at specified times with digital FDR that have 6, 11, or 17 data parameters depending on the date of type certification or manufacture of the airplane. FDR are required in part 135 for multiengine turbine-powered airplanes with a passenger-seating configuration of 10 to 19 seats that were brought on to the U.S. register after October 11, 1991. This means that airplanes manufactured after that date or brought into the country and registered after that date must have FDR, but airplanes previously registered do not have to be retrofitted with FDR. Airplanes having a passenger-seating configuration of 20 or more seats must be equipped with FDR no matter when they were registered.

FDR are an essential tool for determining the causes of airplane accidents. As cockpit technology has advanced FDR have been developed to capture more information on the flight characteristics of an airplane and thereby yield more helpful information in determining the causes of accidents.

Concurrent with this rulemaking, the FAA had determined that the FDR regulations in part 121 need to be updated to address technological advances in airplanes and FDR equipment. The FAA had made a preliminary decision to issue a proposal on FDR in the near future. Subsequent to its review, the NTSB, on February 22, 1995, issued three recommendations concerning FDR changes, and a public meeting is scheduled for April 20, 1995. In light of these developments, it would not be prudent to require affected operators to comply with current part 121 requirements at this time. This proposal would therefore maintain the status quo on FDR requirements, pending future rulemaking.

*Traffic Alert and Collision Avoidance System (TCAS).* Both parts 121 (§ 121.356) and 135 (§ 135.180) require TCAS. Section 121.356(a) requires TCAS II with an appropriate class of Mode S transponders for airplanes with more than 30 seats. Section 121.356(b) requires passenger or combination cargo/passenger airplanes with seating configurations of 10 to 30 seats to have an approved TCAS by December 31, 1995 (59 FR 67584; December 29, 1994).

In both part 121 and part 135, a TCAS II System installed in a 10- to 30-seat airplane must be capable of coordinating with TCAS units that meet TSO C–119.

Section 121.356(c) requires that the manuals required by § 121.131 shall contain certain information in the TCAS II System. Section 135.180(b) has a similar requirement stating that the flight manual required by § 135.21 shall contain certain information on TCAS I.

Since the requirements for 10- to 30-seat airplanes are substantially the same, affected commuters would be able to comply with the part 121 requirements. The manual requirements in part 121 would be updated to apply to TCAS I as well as TCAS II.

*Airborne Weather Radar.* Section 121.357 requires an approved airborne weather radar on all transport category airplanes. Part 135 has requirements identical to part 121 for large transport category airplanes in passenger operations (§ 135.175), but part 135 requirements are less restrictive for airplanes with a passenger-seating configuration of 10 to 19 seats (that is, nontransport category) (§ 135.173). These airplanes may have either airborne weather radar or airborne thunderstorm detection equipment. Both parts 121 and 135 contain exceptions for operations in the states of Hawaii and Alaska and parts of Canada.

While most commuters operating under part 135 probably have airborne weather radar, some of the 10- to 19-passenger-seat airplanes may not. Airborne weather radar provides a higher level of safety than thunderstorm detection equipment because it provides pilots with a more accurate presentation of the relative location and distance of potentially severe weather conditions. Radar may be tilted up or down to show the maximum tops of thunderstorm areas and may be adjusted to display the relative density and strength of the area of potentially severe weather. With radar in an aircraft it is feasible to maneuver safely through an unanticipated entrance into severe weather conditions.

This proposal would require all affected operators to have airborne weather radar on their airplanes.

*Low-Altitude Windshear.* Low-altitude windshear equipment provides a warning to the flightcrew if windshear is in the area and provides guidance for avoiding windshear. Section 121.358 requires low-altitude windshear equipment on turbine-powered airplanes. The definition in § 121.358(d)(1) for turbine-powered excludes turbopropeller-powered and piston-powered airplanes. Part 135 does not require low-altitude windshear equipment. Both part 121 and part 135 (§§ 121.404 and 135.10) require windshear training for crewmembers; part 121 requires ground and flight (simulator) training while part 135 requires ground training.

The proposed rule would not require low-altitude windshear equipment for turbopropeller-powered or piston-powered airplanes since these airplanes are already excluded under the part 121 definition. The performance characteristics of these airplanes make them better able to escape from an inadvertent windshear encounter. The turbopropeller engines and straighter wings of these airplanes enable lift and acceleration to be more immediately applied, thus making the airplanes better able to escape from inadvertent windshear encounters.

If any turbojet-powered airplane is being used in scheduled passenger-carrying operations under part 135, it would have to comply with the part 121 low-altitude windshear equipment requirements. The FAA requests information on any operator who would be affected by this requirement.

*Cockpit Voice Recorders (CVR).* CVR provide accident investigators with information about the flight which helps to determine the cause of an accident or incident and thereby helps to prevent future accidents.

Section 121.359 requires CVR on all large turbine-engine-powered airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger-seating configuration of six or more and for which two pilots are required by type certification, and § 135.151(b) requires another standard

for all multiengine turbine-powered airplanes or rotorcraft having a seating configuration of 20 or more seats.

The proposed rule would not change current CVR requirements. These standards, updated in 1988, continue to be appropriate to the types of operations involved. The requirements now in part 135 for 10- to 19-seat airplanes would be incorporated into part 121 under the proposed rule.

*V.G. Airports*

Section 121.590 requires that no air carrier or pilot conducting operations under part 121 may operate an airplane into a land airport in the U.S. (or territory, etc.) unless the airport is certificated under 14 CFR part 139. Section 135.229 states that no certificate holder may use any airport unless it is adequate for the proposed operation.

Part 139 prescribes regulations governing the certification and operation of land airports that are served by any scheduled or nonscheduled passenger air carrier operating airplanes with a seating capacity of more than 30 passengers. Therefore, part 135 commuter operators may use airports that are not FAA certificated.

Part 139 contains requirements for aircraft rescue and fire fighting equipment, airport guidance signs, airfield inspection procedures, airport staff training, airfield discrepancy reporting (Notices to Airmen), airfield pavement maintenance standards, emergency plans, snow and ice control plans, and runway and taxiway standards.

The statutory authority for the FAA to certificate airports, as specified in 49 U.S.C. 44706(a), limits that authority to an airport ''that serves an air carrier operating aircraft designed for at least 31 passenger seats.'' The NTSB has recommended that the FAA seek legislative expansion of the statute to include in the Airport Certification Program all airports served by air carriers that provide scheduled passenger carrying service and revise part 135 to permit scheduled passenger operations only into airports certificated under the standards in part 139.

In response to the NTSB recommendation, the FAA in conjunction with the Department of Transportation, is proposing legislation which would grant the agency the authority to certificate any airport which receives scheduled service by an air carrier utilizing airplanes designed for 10 or more passenger seats. If approved, this legislation would add approximately 200 airports to the FAA's airport certification program.

Until such legislation is enacted, according to the proposed rule, affected commuters would be permitted to operate into other than part 139 certificated airports. Should the FAA receive expanded authority over airport certification, the FAA would, through rulemaking, propose standards that are sufficiently flexible to cover the range of airports presently served under part 135. These standards could not, in all cases, be at the level currently required under part 139 for part 121 operations.

In anticipation of receiving the necessary legislative authority, the FAA has proposed a task to the Aviation Rulemaking Advisory Committee (ARAC). The task requests ARAC to recommend what requirements in part 139 should be applicable to these airports. In making these recommendations ARAC is to consider accepted industry practices regarding airport safety, personnel available at these airports, costs associated with meeting these requirements (e.g., capital, operating, and maintenance costs), and the types of accidents/incidents that have occurred at these airports. The ARAC task allows all segments of the industry the opportunity to provide input into this effort at the earliest stages and will serve as the basis for rulemaking if the legislative authority is granted.

*V.H. Proposed Effective Date and Compliance Schedule*

The FAA proposes an effective date of 30 days and a general compliance date of 1 year. The FAA also proposes delayed compliance dates for certain actions as listed below. Proposed §§ 121.2 and 135.2 set out the compliance schedule and an accelerated compliance option, as discussed below.

Under the proposal, affected operators would comply with each requirement in part 121 unless an exception is provided in part 121. Therefore, it is important for affected operators to examine and comment on the potential impact on their operations of every part 121 requirement and not just those requirements specifically discussed in this NPRM.

It is the FAA's intention that if a final rule is adopted as a result of this NPRM, the final rule would be published not later than December 31, 1995, and that within 1 year of that date, that is, by December 31, 1996, all affected operators that have air carrier certification or operating certificates issued under part 135 at the time of publication would have completed the approval process and obtained new operations specifications giving them authority to conduct domestic or flag operations under part 121.

Under this proposal, persons who submit applications for or obtain air carrier certificates or operating certificates after 30 days after the effective of the final rule would be required to obtain part 121 operations specifications; however, these new entrants would meet the same requirements as the affected commuters, i.e., delayed dates for compliance and retrofit.

The FAA proposes longer compliance dates than the proposed 1-year general compliance date for some equipment requirements. These requirements, which fall into two categories, retrofit requirements and requirements for newly manufactured airplanes, are explained later in the preamble under the applicable part 121 subpart and are set out in proposed §§ 121.2 and 135.2 (these two sections are identical). In each case, the FAA has calculated the compliance time in consideration that, even if each of the retrofits were to be started immediately, it would take considerable time to accomplish them fleet-wide. Factors that mitigate for a period longer than one year include:

- The necessity for redesign of approved structures and systems, and the extent of those redesigns.
- The requirement to test such redesigns, including the effect of the redesign on other systems.
- The availability of FAA resources for witnessing tests and for making findings of compliance.
- The labor and airplane downtime necessary to accomplish the retrofits.
- The availability (or lack thereof) of appropriate materials and parts, and qualified designers and installers. The short lead times from suppliers and other entities not subject to direct control of operators are also relevent, especially since affected operators may be competing for the same resources.
- The effect of achieving compliance of other requirements that would be imposed by this or other rulemakings. (For example, the compliance period for the proposed requirements for flammability for compliant seat cushions and flotation-capable seat cushions would coincide.)

The longer compliance times are summarized as follows:

*Two-year retrofit period.* The following would require to be retrofitted within 2 years after the publication date of the final rule:

- Landing gear aural warning device (§ 121.289).
- Ditching emergency exits requirements in § 25.807(e) (§ 121.293(a)).

- Lavatory fire protection (§ 121.308).
- Floor proximity lighting, emergency exit handle illumination, and interior and exterior emergency lighting (§ 121.310 (c), (d), (e), and (h)).
- Passenger seat cushion flammability and flotation (§§ 121.312(c) and 121.340).
- Protective breathing equipment (§ 121.337(b)).

For example, compliance with the lavatory fire protection requirements would include redesigning existing lavatories to incorporate automatic fire extinguishers and other hardware, where none had existed before. In attempting to comply with the passenger seat cushion requirements, affected operators may end up competing for suppliers' cushion materials. The incorporation of PBE equipment in cockpits, where space may be scarce, may necessitate design compromises that must be carefully evaluated.

*Four year retrofit.* The following would be required to be retrofitted within 4 years after the publication date of the final rule:

- Pitot heat indication system (§ 121.342).

Additional factors may mitigate for proposing requirements to apply only to newly manufactured airplanes. In addition to consideration of the extent of redesigning and replacing existing systems and structures, the need to revise and re-tool manufacturing processes frequently will be relevant.

*Newly manufactured within 1 year.* The following would be required of newly manufactured airplanes operated in scheduled service 1 year after the publication date of the final rule:

- Safety belts and shoulder harnesses (§ 121.311(f)).

Compliance with this requirement would mandate that use of each belt and harness system, when buckled, allows each flight crewmember to perform their duties, including reaching controls on the flight deck; this may entail a redesign to ensure the proper crewmember-to-control interface.

*Newly manufactured within 4 years.* The following would be required of newly manufactured airplanes operated in scheduled service 4 years after the publication date of the final rule:

- Takeoff warning system (§ 121.293(b)).
- Compartment interior flammability (§ 121.312(a)).
- Cargo and baggage compartments (§ 121.314).

Compliance with the cargo and baggage compartment requirements, for example, would involve redesigning the airplanes to incorporate detector and extinguisher systems; in addition, new compartment liner materials would be incorporated. Compliance would likely necessitate the incorporation of redesigned mechanical, structural, and electrical systems to support the new systems. Designs and materials that have been approved for transport category airplanes may or may not ''work'' in other certificated airplanes; design and testing resources would be expended to confirm whether they do. Space within the fuselages of affected airplanes will likely be at a premium, thus limiting many design alternatives. The availability of (or lack thereof) design, part, and material support may be noticeably affected by competition for them among several operators.

To ensure an orderly transition to part 121 operations, the FAA proposes that a transition plan be submitted by each affected commuter within 60 days of the publication date of the final rule. Such a plan would enable operators to transition to part 121 operations efficiently and methodically, while giving the FAA the information it needs to allocate FAA inspector resources appropriately to ensure that all affected commuters receive both help and oversight as they move to part 121 operations.

Proposed §§ 121.2(g) and 135.2(g) set out the elements of the transition plan. It must contain a calendar of events and show detailed plans for obtaining new part 121 operations specifications, showing compliance with all applicable part 121 requirements, and purchasing and installing equipment within the time allowed for each equipment requirement. Specific discussion of such items as developing and implementing a dispatch system, updating manuals to meet part 121 requirements, and conducting any necessary proving tests would be included in the plan. The plan should also address how compliance with this rule would be coordinated with the implementation of the new rule requiring training under part 121, subparts N and O. (See discussion under ''FAA Related Actions,'' above.)

The FAA requests comments on the proposed effective date and compliance schedule. The FAA encourages affected operators to achieve compliance sooner than the 1-year general compliance date and delayed compliance dates and would like to provide incentives that the FAA can reasonably provide. The FAA requests comments on possible incentives for early compliance.

## VI. Discussion of Specific Proposals

### *VI.A. Part 119—Certification: Air Carriers and Commercial Operators: Summary*

*Purpose of Part 119.* Part 119 is a proposed new part that consolidates into one part the certification and operations specifications requirements for persons who operate under parts 121 and 135. These regulations are currently in SFAR 38–2, which replaced the certification and operations specification requirements in parts 121 and 135 in response to the Airline Deregulation Act of 1978.

Part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988; Docket No. 25713). Based on comments received on the definition of ''scheduled operation'' in the NPRM, the FAA published a Supplemental Notice of Proposed Rulemaking (SNPRM) in 1993 (58 FR 32248; June 8, 1993; Docket No. 25713).

In this NPRM, the FAA is republishing the entire text of part 119 for comment because of the length of time since the first NPRM, the number of changes that have been made to the proposed text, and the significance of the changes to part 119 that are proposed as a result of this NPRM.

In this section of the preamble, changes to proposed part 119 that are the result of this NPRM are explained. Other changes to part 119 that are not related to this NPRM are discussed later in the preamble, after the discussion of the proposed changes to parts 121 and 135.

The FAA requests comments on all aspects of part 119. However, comments already received on the first NPRM and the SNPRM for part 119 will be considered before issuing part 119 as a final rule; therefore, commenters do not need to repeat statements already submitted to the FAA.

*Changes to Part 119 as a Result of this NPRM.* Proposed § 119.3 contains definitions for the 5 kinds of operations conducted under parts 121 and 135 (Domestic, Flag, and Supplemental in part 121 and Commuter and On-demand in part 135). The FAA proposes to move the affected commuters to part 121 by changing the definitions for ''Commuter operations,'' ''Domestic operations,'' and ''Flag operations.''

The most important change to the proposed definitions of ''domestic operations'' and ''flag operations'' is that instead of applying to airplanes with more than 30 passenger seats, the definitions would apply to airplanes with more than 9 passenger seats. However, scheduled passenger-carrying operations conducted with turbojet-

powered airplanes are defined as ''domestic operations,'' or ''flag operations,'' regardless of the number of passenger seats. Minor changes are also made in the part of the definitions that specifically identify which operations are considered ''domestic'' and ''flag.'' ''Domestic operations'' generally mean operations are conducted between points within the 48 contiguous states and the District of Columbia, or between any two points within any state, territory or possession of the U.S. ''Flag operations'' generally mean operations conducted between any point within Alaska or Hawaii, or any territory or possession of the U.S., and any point outside the U.S., Alaska, Hawaii, or possession of the U.S.—and, any point outside Alaska, Hawaii, or any territory or possession of the U.S. Flag operations also include operations conducted between any point within the 48 contiguous states or the District of Columbia and any points outside the contiguous states or the District of Columbia.

The definition of ''commuter operation'' would be changed so that smaller airplanes used in scheduled passenger operations would be considered commuter—those conducted with airplanes that have 9 or less passenger seats, except for turbojet-powered airplanes, as explained above, and those that are conducted with rotorcraft, regardless of the size.

A change to the definition of ''scheduled operation'' may have an effect on certain operations that are not currently considered ''commuter operations.'' Under SFAR 38–2 and as previously proposed in part 119, the only operations that are considered commuter are those with a frequency of operations of at least five round trips per week on at least one route between two or more points according to published flight schedules. Scheduled operations with a lesser frequency are conducted under the on-demand rules. In this NPRM, the FAA proposes to eliminate the frequency test so that an operation with as few as one scheduled flight per week would have to be conducted under either the commuter rules of part 135 (for airplanes configured with 9 or fewer passenger seats) or the domestic or flag rules of part 121 (for airplanes configured with more than 9 passenger seats). This change is being proposed so that all scheduled passenger operators would be required to follow the applicable rules, i.e., domestic, flag, or commuter. The FAA is not aware of any operations that would be affected by eliminating the frequency test and specifically requests comments on the impact of this proposed change.

The definitions of ''on-demand operation'' and ''supplemental operation'' have been rewritten to make it clearer which operations fall into these categories. They have not changed significantly from current rules or from the NPRM, except for one important difference. This NPRM does not change the basic dividing line between on-demand and supplemental operations (more than a 30-passenger-seat configuration or more than 7,500 pound payload capacity is a supplemental operation), except that if a specific airplane with a passenger-seating configuration of 10 to 30 seats is used in domestic or flag operations as a result of this rule, any nonscheduled operation conducted with that airplane must be conducted under the part 121 supplemental rules, instead of under the on-demand rules of part 135. This is necessary because an airplane must be listed in a certificate holder's operations specifications as either a part 121 or a part 135 airplane; it cannot be switched back and forth between parts without a major investment of time and resources by both the operator and the FAA. Switching between parts entails many things, including airplane conformity checks, equipment checks, and record checks.

Section 119.21 contains the regulatory roadmap that requires domestic, flag, and supplemental operations to be conducted under part 121 and commuter and on-demand operations to be conducted under part 135. (See also Table 2 for a visual aid to the operating rules that apply to different kinds of operations.) This section has been reorganized and rewritten to make it easier to follow. It contains a provision that allows commuter operations to be conducted under domestic or flag rules, if the certificate holder obtains authorization from the Administrator. Likewise, part 135 on-demand operations may be conducted under the supplemental rules of part 121, if the certificate holder obtains authorization from the Administrator.

Section 119.49, Contents of Operations Specifications, specifies all of the items that are listed in each certificate holder's operations specifications. Although no substantive changes are being proposed for this section, affected commuters should carefully review this section because they would need to obtain revised operations specifications that allow them to conduct operations under part 121. Generally, affected commuters who conduct domestic operations would need to obtain operations specifications for domestic operations, while affected commuters who operate internationally would need to obtain operations specifications for flag operations. The items included in operations specifications for commuter operations are the same as for domestic and flag operations except that, under § 119.49(a)(4), domestic and flag operations must also list provisional and refueling airports. Affected commuters would need to identify these airports for their operations.

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS

| Size/weight of aircraft | Part 121 domestic (Scheduled) | Part 121 flag (Scheduled) | Part 121 supplemental (Not scheduled) | Part 135 commuter (Scheduled) | Part 135 on-demand (Not scheduled) | Part 125 (Not scheduled) |
|---|---|---|---|---|---|---|
| *Airplanes* (Common Carriage): | | | | | | |
| ≤9 seats and ≤7500 lbs | No[1] | No[1] | No[2] | Yes[1] | Yes[2] | No |
| 10–30 seats and ≤7500 lbs | Yes | Yes | No[2] | No | Yes[2] | No |
| >30 seats or >7500 lbs | Yes | Yes | Yes | No | No | No |
| *Airplanes* (When common carriage is not involved): | | | | | | |
| <20 seats or <6000 lbs | No | No | No | No | Yes | No |
| ≥20 seats or ≥6000 lbs | No | No | No | No | No | Yes |

TABLE 2.—OPERATING RULES THAT APPLY FOR DIFFERENT KINDS OF OPERATIONS—Continued

| Size/weight of aircraft | Part 121 domestic (Scheduled) | Part 121 flag (Scheduled) | Part 121 supplemental (Not scheduled) | Part 135 commuter (Scheduled) | Part 135 on-demand (Not scheduled) | Part 125 (Not scheduled) |
|---|---|---|---|---|---|---|
| *Rotorcraft:* | | | | | | |
| Common carriage and when common carriage is not involved. | No | No | No | Yes | Yes | No |

[1] Turbojet-powered airplanes used in scheduled passenger-carrying operations must comply with part 121 regardless of passenger seating or payload capacity.

[2] If turbojet-powered airplanes and other airplanes with 10–30 seat configurations are used for part 121 Domestic or Flag operations, non-scheduled or charter operations with that airplane shall be conducted under part 121 supplemental rules.

Also, current FAA policy and guidance require a 121 operator to have detailed operations specifications for intended VFR operations. Part 135 is more liberal in the conduct of VFR operations allowed. FAA believes that a higher level of safety is gained by conducting operations under instrument flight rules (IFR). Therefore IFR operations are seen as the standard; VFR operations, although still allowed, would be an exception approved only through operations specifications.

Before the FAA approves an affected commuter for domestic or flag operations and issues the new operations specifications, an FAA inspector would need to review all of the certificate holder's operations and procedures to ensure that the certificate holder has made the changes necessary in its operations to comply with part 121 rules. The FAA inspector would review and approve such items as the dispatch system, revised manuals, procedures for complying with part 121 flight time and rest requirements, completion of airplane proving flights, etc. The FAA will provide guidance to the affected commuters so that they can prepare for this approval process.

Requirements for the types and qualifications of management personnel for parts 121 and 135 operations are consolidated in proposed part 119. Sections 119.65 and 119.69 contain the types of management positions required for part 121 and part 135 operations, respectively. Sections 119.67 and 119.71 specify the qualifications for individuals in those positions. Section 119.65 proposes that part 121 operations have a Director of Safety, a Director of Operations, a Chief Pilot, a Director of Maintenance, and a Chief Inspector. Section 119.69 proposes that part 135 operations have only a Director of Operations, a Chief Pilot, and a Director of Maintenance. However, § 119.65(b) contains a provision that the Administrator may approve positions or numbers of positions other than those listed above for a particular operation if the certificate holder can show that safety can be maintained with fewer or different categories of management personnel.

The FAA is proposing in § 119.65 that each certificate holder that conducts operations under part 121 must have a Director of Safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. In its recent survey of 21 commuter airlines, the NTSB found that the person most likely approached by pilots with safety concerns was the Chief Pilot or the Director of Operations, the persons also responsible for the day-to-day management of line operations. The FAA agrees with the NTSB that, although other management personnel should be informed and aware of safety concerns, a safety officer can be most effective when functioning independently of those with responsibility for day-to-day operations. For this reason, ideally the Director of Safety should not also be assigned to any of the other required management positions in § 119.65 (Director of Operations, Chief Pilot, Director of Maintenance, Chief Inspector), nor should the Director of Safety report to any of those positions, but should instead report to only the highest management levels at the airline. However, the FAA realizes that this could create a problem for smaller operators with fewer management level positions. The FAA invites comments on how to structure an independent safety function in airlines of different sizes and is particularly interested in responses to questions such as: Should the rules require that the Director of Safety be a separate position, totally independent of other management positions? What would be the burden of such a requirement? If, following a review of the comments received, the FAA decides to adopt a mandatory separation of function, the final rule will specifically require this.

The qualification requirements for management positions are similar for parts 121 and 135 operations, except that the qualifications for Director of Operations and Director of Maintenance are more stringent for part 121 than for part 135. Under § 119.67(a), a Director of Operations for a part 121 operation must have both 3 years supervisory or managerial experience within the last 6 years and 3 years experience as a pilot in command (PIC) of a large airplane. If the person is becoming the Director of Operations for the first time, the three years as a PIC must have been within the last 6 years. Under § 119.71(a), a Director of Operations for a part 135 operation must have either 3 years supervisory or managerial experience within the last 6 years or 3 years experience as a PIC. Again, if the person is becoming Director of Operations for the first time, the three years of PIC experience must have been within the last 6 years. Under § 119.67(c), a Director of Maintenance for a part 121 operation must have 5 years experience within the past 5 years in one or a combination of maintaining the same category and class of airplane as the certificate holder uses or repairing airplane in the same category and class of airplane as the certificate holder uses in a certificated airframe repair station.

In addition the person must have 1 year of supervisory experience in maintaining the same category and class of airplane as the certificate holder uses. Under § 119.71(e), a Director of Maintenance for a part 135 operation must have either 3 years experience within the past 3 years maintaining the same category and class of aircraft as the certificate holder uses or 3 years experience within the past 3 years repairing aircraft in the same category and class of aircraft as the certificate holder uses in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service. Under § 119.67(e) affected commuters who currently employ persons as Director of Operations, Director of Maintenance, or Chief Pilot who do not meet the airman, managerial, or supervisory experience

requirements in proposed § 119.67 may request the Manager of the Flight Standards Division in the region of the certificate-holding district office to authorize the continued employment of those individuals. The certificate holder must be able to show that those individuals have comparable aeronautical experience that qualifies them to serve as Director of Operations, Director of Maintenance, or Chief Pilot for a part 121 operation. Proposed § 119.67(e) does not allow for a waiver of the airman certification requirements by the Managers of the Flight Standards Division for those management positions.

*VI.B. Part 121 Discussion*

The FAA has evaluated each requirement in part 121 to determine what effect compliance would have on affected operators. The following discussion describes (1) any proposed revisions to part 121 that would be necessary so that affected operators can comply with the requirement; and (2) any requirements that would be new or different for affected operators and that would impose a burden on the affected operators. If the FAA has determined that current part 121 and 135 requirements are identical or similar or that the change in compliance would not impose a burden, the requirements are not for the most part discussed.

Since all of part 121 would apply to affected operators unless otherwise stated in the proposed rule, each affected operator and individual should evaluate all of part 121, not only the proposed revisions, to determine how the proposed rule would affect them. The FAA invites comments on any effects of this proposed rule whether or not the requirements have been specifically addressed in this notice.

Discussion of subpart A revisions appears in the part 119 portion of the preamble. Subparts B–D would be reserved since the current substance of these subparts would be subsumed under part 119.

VI.B.1. Subpart E—Approval of Routes: Domestic and Flag Air Carriers

Section 121.97 requires all domestic and flag operators to show that each route it submits for approval has enough airports that are properly equipped and adequate for the proposed operation. They must also have an approved system to disseminate this information to appropriate personnel. Part 135 has similar requirements, but part 121 does require additional information. The FAA believes this would not have a significant impact on operators affected by this rule change.

Section 121.99 requires all domestic and flag operators to have a two-way air/ground communications system between each airplane and the appropriate air traffic control facility, along the entire route. In the 48 contiguous States and the District of Columbia, the communications system between each airplane and the dispatch center must be independent of any system operated by the United States. This would be a new requirement for the affected operators.

Section 121.101 requires each domestic and flag operator to show that enough weather reporting facilities are available along each route to ensure weather reports and forecasts necessary for the operation. For operations within the 48 contiguous States and the District of Columbia, these reports must be prepared by the National Weather Service. For other areas, a system must be approved by the Administrator. Section 135.213 has similar requirements, except the pilot in command is allowed to use various other sources, including his own weather assessment, for VFR operations. This section also requires reports of adverse weather phenomena. The FAA proposes that affected operators comply with part 121.

Section 121.107 requires each domestic and flag operator to have enough dispatch centers, adequate for the intended operation. This would be a new requirement for affected operators.

See the Dispatch System discussion in the ''Major Issues'' section of this NPRM for further discussion of this subpart.

VI.B.2. Subpart F—Approval of Areas and Routes for Supplemental Air Carriers and Commercial Operators

This subpart is similar to subpart E, except it applies to supplemental operations, and discusses flight following requirements. This subpart would apply in cases where an affected operator uses an airplane that is also used in domestic operations to conduct a nonscheduled operation, as discussed above in Section VI.A.—Part 119 Summary.

See the Dispatch System and Flight Following System discussion in the ''Major Issues'' section of this NPRM for further discussion of this subpart.

VI.B.3. Subpart G—Manual Requirements

*Manual requirements: Contents and personnel:* Under subpart G of part 121 certificate holders are required to prepare and keep current a manual containing policies, procedures, applicable regulations, and other information necessary to allow crewmembers and ground personnel to conduct the operations properly (see § 121.133 and § 121.135). While the requirements of parts 121 and 135 are similar, part 121 manual requirements contain a more extensive list of manual contents (§ 121.135). Under part 121 the manual or appropriate parts must also be furnished to more personnel, such as aircraft dispatchers, flight attendants, and made available to others, such as station agents. The effect of these differences between compliance with part 121 versus compliance with part 135 would be significant for commuter operators. The proposal would require developing, producing, and distributing new manuals appropriate to part 121. In addition, § 121.137 requires the air carrier to issue a manual or appropriate parts to each crewmember and requires each crewmember to keep the manual up to date and have it with him or her when performing assigned duties. Part 135 does not require that flight attendants be issued a manual; however, it does require that persons to whom a manual is issued must keep it up-to-date (see § 135.21). The FAA believes that each crewmember should have his or her own manual containing up-to-date information and regulations pertinent to the crewmembers assigned duties. For flight attendants the manual would contain information about inflight medical emergencies, airplane evacuations, water landings, and other emergencies.

*Airplane flight manual.* Section 121.141 requires each certificate holder to keep a current approved airplane flight manual for each type of transport category airplane that it operates and to carry in each transport category airplane either the current flight manual or the manual required by § 121.133 if that manual contains the flight manual information. Part 135 does not have a comparable requirement; however, part 135 operators currently must comply with § 91.9, which requires an approved airplane flight manual on board the airplane if that manual has been developed. All operators affected by this proposal would already have an approved airplane flight manual. The requirement under part 121 is more permissive, allowing appropriate parts of the certificate holder's manual to be developed and carried instead of the flight manual and allowing some modifications of flight manual information if they are approved by the Administrator. This action proposes to include airplanes used by affected commuters under the manual requirements of § 121.141 and the

applicability statement of the current rule would be revised accordingly.

VI.B.4. Subpart H—Airplane Requirements

Subpart H of part 121 contains airplane requirements that apply to all certificate holders operating under part 121. Section 121.153 contains general requirements (e.g., airplanes must be in an airworthy condition) that would add no additional burden to airplanes presently operated under part 135.

Section 121.157 contains type certification requirements for various types of airplanes operated under part 121. Paragraph (a) of § 121.157 contains requirements that apply to airplanes type certificated before July 1, 1942. While it is unlikely that any airplanes of this vintage are presently operating under part 135 (except possibly an occasional DC–3) these requirements would be appropriate to such operations and therefore would not be changed.

Paragraph (b) of § 121.157 states that except for C–46 type airplanes covered in paragraphs (c) and (d), no airplane type certificated after June 30, 1942 may be operated under part 121 ''unless it is certificated as a transport category airplane'' and meets applicable airplane performance operating limitations as specified in paragraphs (a), (b), (d), and (e) of § 121.173. Since most of the 10-to-19 passenger airplanes that would be affected by this proposal were type certificated in the commuter category (or one of the predecessors of the commuter category) a new exception to paragraph (b) is proposed as a new paragraph (e).

Paragraphs (c) and (d) of § 121.157 apply to C–46 type airplanes and would not have any impact on this rulemaking since no C–46 type airplanes are presently operating under part 135.

Current paragraph (e) of § 121.157 would be deleted because helicopters are no longer operated under part 121.

Proposed new paragraph (e) would allow nontransport category airplanes type certificated after December 31, 1964, to be operated under part 121 if they were type certificated in the commuter category or fall into one of the categories listed below (referred to as ''commuter category predecessors'') and meet the additional airworthiness requirements of subpart I as made applicable by the proposed amendments to that subpart:

1. Airplanes type certificated before July 1, 1970, in the normal category that meet special conditions issued by the Administrator for airplanes intended for use in operations under part 135.

2. Airplanes type certificated before July 19, 1970, in the normal category that meet the additional airworthiness standards in Special Federal Aviation Regulation No. 23.

3. Airplanes type certificated in the normal category that meet additional airworthiness standards in appendix A of part 135.

4. Airplanes type certificated in the normal category and that comply with either section 1.(a) or section 1.(b) of Special Federal Aviation Regulation No. 41.

Proposed new paragraph (f) would require that to be operated under part 121 newly type certificated airplanes (i.e., those for which an application is submitted after the publication of this NPRM) must be type certificated under part 25. For newly type certificated airplanes this change would, in effect, reinstate the requirement that airplanes operated under part 121 must be transport category airplanes. Notwithstanding this proposal, the FAA recognizes that some present requirements of part 25 may not be appropriate for all propeller-driven, multiengine airplanes with less than 20 passenger seats (present airplanes used by affected commuters). Therefore the FAA, as previously discussed, has undertaken a comparative review of parts 23 and 25 and will in the near future propose changes to part 25 as appropriate to accommodate these airplanes which would previously have been type certificated in the commuter category under part 23.

*Single-engine airplanes.* Section 121.159 prohibits operation of single-engine airplanes under part 121. No change to this prohibition is proposed in this rulemaking since the FAA does not consider single-engine airplanes acceptable to part 121 standards. For example, a single-engine airplane could not meet part 121 requirements, such as the one-engine-inoperative requirements of § 121.191. This section is amended to delete an obsolete reference to § 121.9.

*Airplane limitations: Type of route.* Section 121.161 requires that a two-engine or three-engine airplane must be within 1 hour flying time from an adequate airport at normal cruising speed with one engine inoperative. While part 135 does not contain a comparable requirement, the FAA believes that this requirement can be met by present part 135 operators with the possible exception of some Alaskan operations. Since § 121.161 contains authority for deviations if approved by the FAA (AC 120–42 contains acceptable criteria), this requirement should not impose any undue burden.

This section also requires (with some exceptions for older airplanes) part 25 ditching certification for extended overwater operations, which the FAA believes should be applied to the operations that would be moved from part 135 to part 121 by this proposal. Therefore, no changes are proposed to this requirement.

The FAA invites specific comments on the potential impact of these proposals on operations in Alaska.

*Proving tests.* Section 121.163 provides proving test requirements for Part 121. Section 135.145 requires 25 hours of proving tests for certificate holders that operate turbojet airplanes or airplanes for which two pilots are required by this chapter for operations under VFR if that airplane or an airplane of the same make and similar design has not been previously proved in any operations under part 135. Like § 135.145, § 121.163 requires proving tests for materially altered airplanes. However, in contrast, under § 121.163, proving tests apply to each airplane to be operated under part 121; it also describes three types of proving tests. Under § 121.163 and § 135.145, additional proving tests are required after the aircraft type certification tests. In other words, the initial operator of a type of airplane must conduct at least 100 hours of proving tests acceptable to the FAA, which can be reduced in appropriate circumstances. Moreover, for each kind of operation (e.g., domestic, flag, supplemental) that an operator conducts, 50 hours of proving tests are required, which are also reducible in appropriate circumstances.

For existing airplanes, in each case the FAA would assess whether to reduce proving test hours required by § 121.163(b) for the target operators that would be subject to § 121.163 if this proposal is adopted. Factors that might be considered in any request for reduction in proving test hours include the operator's experience and performance in part 135 operations.

VI.B.5. Subpart I—Airplane Performance Operating Limitations

Subpart I contains airplane performance operating limitations that apply to all part 121 certificate holders; however, not every section in subpart I applies to every certificate holder. For example, §§ 121.175 through 121.187 apply to reciprocating engine-powered transport category airplanes, and §§ 121.189 through 121.197 apply to turbine-powered-engine transport category airplanes (with an exception for certain reciprocating-powered airplanes that have been converted to turbo-propeller-powered). Sections 121.199 through 121.205 apply to nontransport category airplanes.

Sections 135.361 through 135.395 are virtually identical to §§ 121.171 through 121.205; the main differences reflect the absence of a dispatch system in part 135 operations. Section 135.363 makes clear that the term ''large nontransport category airplane'' as used in the subpart means an airplane type certificated before July 1, 1942. This language does not appear in part 121 because it is understood from the context in part 121 that the term ''nontransport category airplane'' is referring to older airplanes that were type certificated before the transport category was established. This clarification was needed in part 135 because of the existence of commuter category airplanes, most of which fit the definition of ''large'' and are also ''nontransport category'' airplanes. Part 135 addresses performance operating limitations for commuter category airplanes in § 135.398 by referencing §§ 135.385 and 135.387, which parallel §§ 121.195 and 121.197. The FAA believes that airplanes type certificated in the commuter category (or its predecessors) that would be operated under part 121 under this proposal should be required to meet, and are capable of meeting, the same performance operating limitations that now apply only to airplanes type certificated in the transport category. Therefore, the FAA proposes to delete the term ''transport category'' throughout subpart I and to include language where appropriate to except airplanes type certificated before January 1, 1965, that were not certificated in the transport category. This proposal would have the effect of requiring airplanes type certificated in the commuter category or a commuter category predecessor to be operated under the performance operating limitations of §§ 121.175 through 121.197, as applicable.

VI.B.6. Subpart J—Special Airworthiness Requirements

Subpart J contains special airworthiness requirements that, as stated in the applicability section (§ 121.211), apply to all certificate holders. While this is semantically accurate, it is confusing because the airplane description in § 121.213 in fact describes pre-1942 nontransport category and pre-October 1946 transport category airplanes thereby limiting the applicability of §§ 121.215 through 121.283 to those airplanes. Sections 121.285 through 121.291 apply across-the-board to present part 121 operations.

To clarify the applicability of this subpart, the FAA proposes to expand § 121.211 to include the substance of § 121.213. As proposed, § 121.211 would break the special airworthiness requirements into three categories: (1) Those that apply to certain older type certificated airplanes (§§ 121.215 through 121.283); (2) those that apply to all airplanes operating under part 121 (§§ 121.285 through 121.291); and (3) those that would apply to airplanes presently operating under part 135 (proposed new § 121.293).

*Cargo carried in the passenger compartment.* Section 121.285 requires that cargo carried in passenger compartments must be stowed in a fully enclosed bin or carried aft of a bulkhead or divider and properly restrained. Section 135.87 allows operators to carry cargo in an approved cargo compartment instead of a fully enclosed bin and to carry restrained cargo anywhere in the passenger compartment if it is restrained by a net that meets the requirements of § 23.787(e). The FAA considers that it is not practical to require airplanes now operating safely under part 135 to install fully enclosed cargo bins or to be otherwise as limited as required by § 121.285. Therefore, FAA proposes to amend § 121.285 to add an exception for commuter category (and predecessor) airplanes that would have the effect of allowing cargo to be carried in the passenger compartment as it is today.

*Landing gear aural warning device.* Section 121.289 contains a requirement for a landing gear aural warning device for large airplanes. Thus, at present this section applies to any airplane with a maximum certificated takeoff weight of more than 12,500 pounds. Appendix A of part 135 requires a landing gear warning device for airplanes having retractable landing gear and wing flaps, but the device need not be aural. The FAA considers that the cost of replacing a warning light with a warning sound would be minimal. Therefore, this section would apply to any airplane that presently operates under part 135 and that would be required by this proposal to operate under part 121. To allow adequate time for airplanes without aural warning devices to be retrofitted, the FAA proposes a compliance date of 2 years after the publication date of the final rule.

*Emergency evacuation and ditching demonstrations.* Section 121.291 contains requirements for conducting demonstrations of airplane evacuation and ditching procedures. The FAA requires these demonstrations upon introduction of a new type and model of airplane into passenger-carrying operations. For airplanes with a seating capacity of more than 44 passengers, an actual evacuation demonstration must show that the full capacity of the airplane and the crewmembers can be evacuated within 90 seconds. Also, for airplanes with more than 44 passenger seats a partial demonstration is required, as specified in § 121.291(c). Demonstrations are not required for airplanes with fewer than 44 passenger seats.

Under § 121.291(d) any certificate holder operating or proposing to operate one or more landplanes of any size in extended overwater operations must conduct a simulated ditching in accordance with Appendix D to part 121. The purpose of the ditching demonstration is to show that the certificate holder's training and procedures for a new type and model of airplane are satisfactory. The simulated ditching does not specifically require the use of flight attendants; the FAA proposes to apply this rule to any affected commuter operator who conducts extended overwater operations, whether or not flight attendants are used in the operation.

The FAA intends to apply this provision to the affected commuter operators only when a new type and model of airplane is introduced after the effective date of the final rule. If a certificate holder has been using an airplane in scheduled passenger-carrying operations before the effective date of the final rule and the FAA has not found any serious deficiencies with its ditching procedures during the past 5 years during either normal or National Aviation Safety Inspection Program (NASIP) inspections that have not been satisfactorily corrected, the FAA may make a determination that the operator's crewmember emergency training and ditching procedures are adequate.

The FAA proposes to amend § 121.291 to clarify that the partial demonstration and emergency evacuation procedures apply only to airplanes with more than 44 passenger seats.

*New special airworthiness requirements (retrofit) and requirements applicable to future manufactured airplanes.* In general, airplanes currently flown under part 121 must be transport category airplanes; that is, type certificated under part 25 or one of its predecessors (see § 121.157). The only exceptions are several models of airplanes that were type certificated before the transport category was established. For these earlier airplanes, part 121 contains special requirements established to ensure that transport category standards would be met to the maximum extent feasible. By requiring that airplanes previously operated under part 135 meet most part 121

requirements, the FAA would ensure that these airplanes type certificated in the commuter category or its predecessors, for the most part, meet part 121 safety standards. However, because these airplanes were not type certificated in the transport category, the FAA has reviewed part 25 to determine whether any additional requirements should be added to part 121 either as a retrofit requirement or a requirement that applies only to airplanes manufactured after some future date. There are two such requirements and each is discussed separately in this section of the preamble.

*Ditching emergency exits.* Section 25.807(e) contains requirements for ditching emergency exits in transport category airplanes. Regardless of whether or not the airplane is certificated for ditching, it must have exits that are usable while the airplane is afloat, in case ditching occurs during an overwater climb-out or approach. The ditching exits for transport category airplanes with 10 or more passenger seats must meet at least the dimensions of a Type III passenger emergency exit (20 inches wide by 36 inches high).

Part 23, as recently amended by Amendment 23–46 (59 FR 25772; May 17, 1994), now contains requirements for ditching exits; however, all of the normal or commuter category airplanes currently in service were type certificated before that amendment became effective. The FAA proposes to amend part 121 (proposed new § 121.293(a)) to require ditching exits for nontransport category airplanes type certificated after December 31, 1964. Unlike those required for transport category airplanes, the ditching exits would only have to be as large as those currently required by § 23.807(b) (19 inch by 26 inch ellipses). Compliance would be required 2 years after the publication date of the final rule. This proposed requirement would not entail adding new exits. The overwing exits of most airplanes type certificated under part 23 would probably qualify as ditching exits. Part 25 airplanes intended for non-part 121 transportation sometimes comply by providing a sheet metal dam that can be installed in the passenger entry doorway. If it is necessary to consider a floor-level exit as a ditching exit in a nontransport category airplane, a similar sheet metal dam could be provided. Therefore, the FAA believes that the cost of this proposal is minimal.

*Takeoff warning system.* Section 25.703 requires an aural warning to the flightcrew at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. Part 23 does not require a takeoff warning system; in addition, part 23 airplanes typically do not have multiple types of devices. Accidents have occurred on transport category airplanes when the flightcrews initiated takeoffs when the airplanes were not in the proper configurations for takeoff. While the FAA is not aware of any incidents or accidents involving airplanes used by affected commuters, the FAA believes the cost of this modification on future manufactured airplanes is moderate. The FAA proposes that airplanes manufactured after a date 4 years after the publication date of the final rule would be required to have a takeoff warning system as required by § 25.703 except that a warning would not be required for any device if it is demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition (see proposed § 121.293(b)).

VI.B.7. Subpart K—Instrument and Equipment Requirements

Instrument and equipment requirements are contained in part 121, subpart K and part 135 subpart C. The requirements are in addition to the airplane and equipment requirements of part 91. The discussion below emphasizes all new or revised equipment requirements except for major equipment such as flight data recorders and airborne weather radar, which are previously discussed in the ''Major Issues'' section of this notice.

The proposal would require commuter operators to comply with part 121 airplane and equipment requirements except in areas that will be specifically discussed.

Sections 121.303, 121.305, and 121.307 require certain airplane instruments and equipment. Most of the airplanes used by affected commuters already have these instruments and equipment as required under part 135 (§§ 135.143 and 135.149). Some of the part 121 equipment is required under part 135 only for IFR or for VFR over-the-top and VFR night operations. Under this proposal this equipment would be required for all operations.

*Lavatory fire protection.* Section 121.308 currently requires lavatory smoke detection systems, or equivalent, and automatically discharging fire extinguishers in lavatory receptacles for towels, paper, or waste for passenger-carrying transport category airplanes. Although mitigated somewhat by the typically shorter flight stage lengths, a passenger's temptation to smoke illicitly in a lavatory (when there is one), exists in nontransport category airplanes used in air carrier service as well as in transport category airplanes. This is particularly true today, since smoking has been banned on most domestic airline flights. Furthermore, the consequences of illicit smoking could be equally catastrophic regardless of how the airplane was type certificated. Therefore, the FAA proposes to apply the requirements of § 121.308 to airplanes formerly operated under part 135 that are equipped with lavatories. Section 121.308 would be amended to delete the references to transport category. The FAA proposes that the required equipment be installed within 2 years after the publication date of the final rule.

*Emergency equipment.* Section 121.309(b) requires that each item of emergency and flotation equipment must be inspected regularly in accordance with inspection periods established in the operations specifications to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes. Section 135.177(b) contains a similar requirement for part 135 operators of airplanes with more than 19 seats. The FAA proposes requiring affected commuter operations, including those with airplanes of 10 to 19 seats, to comply with the existing part 121 requirement. Other provisions in this proposal would require additional emergency equipment to be installed by the new part 121 operators. This requirement would mandate only that the equipment be inspected in accordance with the established periods.

*Hand-held fire extinguishers.* Sections 121.309(c) and 135.155 contain the requirements for hand-held fire extinguishers aboard airplanes. The requirements are basically the same, except that part 121 requires that at least two of the required hand fire extinguishers must contain Halon, or equivalent. Part 135 does not require any Halon fire extinguishers. Part 121 requires a hand-held fire extinguisher to be conveniently located for use in each galley located in a compartment other than a passenger, cargo, or crew compartment. Part 121 also requires that at least one hand fire extinguisher be conveniently located and easily accessible for use in the galley when the galley is in a passenger compartment. The FAA proposes that the affected commuters comply with the part 121 requirements for fire extinguishers. The FAA proposes to amend § 121.309(c)(7) to require that at least one of the fire extinguishers in the passenger compartment must be a Halon fire

extinguisher or equivalent. The FAA has in prior rulemakings addressed the need to allow Halon equivalents because the availability of Halon may be limited in the future (see, for example, 56 FR 15452, April 16, 1991).

*First aid kits and medical kits.* Section 121.309(d) requires that both approved first aid kits and approved emergency medical kits be carried on board passenger-carrying airplanes. The medical kits are intended to be used only by medically qualified persons, such as doctors, who may be on board the airplane. Section 135.177(a)(1) requires first aid kits to be carried on board airplanes with more than 19 passengers.

The FAA believes that, regardless of the size of the airplane, flight attendant requirement, or other factors, inflight emergencies could occur and a first aid kit may be needed. In the absence of a flight attendant, a flight crewmember or a passenger could use the first aid kit. Therefore the FAA proposes that first aid kits be required for all airplanes with more than 9 passenger seats operating under part 121.

The medical kit contains medical supplies such as certain drugs, syringes, and needles. Although medical kits may be used only by medically qualified personnel, flight attendants are required to be familiar with the medical kit and its contents. Since a flight attendant can monitor the security and use of the medical kit, medical kits should be required only on airplanes that are required to have a flight attendant. Additionally, if the FAA were to require a medical kit on 10–19 seat airplanes, that would mean that a pilot could be required to leave the flight deck to administer the use of the kit. Moreover, security and location of the kit pose additional problems for requiring a medical kit on an airplane where there is no flight attendant. Therefore, the FAA proposes to amend § 121.309(d) to require medical kits only for airplanes that are required to have a flight attendant. However, following review of the comments received, if the FAA decides to require a medical kit onboard 10–19 seat airplanes, the final rule will specifically require the medical kit for such airplanes.

Affected commuters should be aware of a recent rule requiring disposable latex gloves for both first aid kits and medical kits. The changes to part 121 in that rulemaking would apply also to commuters affected by this NPRM. (See 59 FR 52640; October 18, 1994, and 59 FR 62276; December 2, 1994.)

*Crash ax.* Section 121.309(e) requires that each airplane be equipped with a crash ax, while § 135.177 requires a crash ax only for airplanes with a passenger seating configuration of more than 19 passengers. Crash axes are intended to be used by crewmembers to escape from the flight deck in the event of an accident. In airplanes that do not have a separate flight deck and lockable door, crash axes normally would not be needed by the flight crewmembers to escape from the flight deck. The FAA therefore proposes in § 121.309 to retain the present requirement for crash axes only in airplanes that have a separate flight deck and lockable door.

*Emergency evacuation lighting and marking requirements.* Section 121.310(c), by referencing § 25.812(e), requires emergency evacuation lighting for passengers when all sources of illumination more than 4 feet above the cabin aisle are totally obscured. This requirement, which was adopted to enable passengers to find the emergency exits when the cabin is filled with dense smoke, applies to all transport category airplanes regardless of how many passenger seats they have. There is no corresponding requirement in part 23 or in part 135 for airplanes having a passenger-seating configuration of less than 20 seats. The FAA believes that applying this requirement to propeller-driven airplanes with 10 to 19 passenger seats is consistent with the present requirements for transport category turbojet-powered airplanes with similar seating capacities because the need to ensure conspicuous lighting of the exit is the same for nontransport category airplanes as for transport category.

Section 121.310(d) for emergency light operation requires that each light required by paragraphs (c) and (h) must be operable manually and must operate automatically from the independent lighting system. These requirements would apply to affected commuters. In § 121.310(d)(2)(i) each light must be operable manually both from the flightcrew station and from a point in the passenger compartment that is readily accessible to a normal flight attendant seat. Under the proposed rule this requirement would be modified for affected commuter operations that would not be required to have a flight attendant.

Section 121.310(e) requires that an exit operating handle may not be used if its brightness decreases below a specified level. Section 135.178(e) contains an identical requirement for airplanes having a passenger seating configuration of more than 19 seats. Under this proposal the requirement would also apply to airplanes with a passenger configuration of 10–19 seats. Compliance with this requirement can be demonstrated by assuring that the exit operating handle is well illuminated by the emergency lighting system or by using a self-illumination system.

Section 121.310(f) contains standards for access to various exit types that, by virtue of § 121.157, presently apply only to transport category airplanes. Section 135.178(f) is identical for airplanes having a passenger configuration of more than 19 seats. The FAA considers that because of the sizes and configurations (that is, 10 to 19 passenger-seat configurations) of the airplanes and because of the type certification requirements of part 23 applicable to these exits, it is not necessary to apply these requirements to the nontransport category airplanes operating under part 135 that would be affected by this rulemaking. Therefore, the FAA proposes to amend § 121.310(f) to exclude commuter category (or predecessor) airplanes.

Section 121.310(g) (and its parallel requirement in § 135.178(g) for more than 19 passenger seat airplanes) require emergency exits to be marked on the outside by a 2-inch band contrasting in color with the surrounding fuselage. This requirement was adopted to enable ground rescue personnel to locate the exits more rapidly in an emergency condition. Most airplanes with a passenger-seating configuration of less than 20 seats operating under part 135 already meet this requirement and, for those that do not, compliance would merely require painting the bands around each exit. By proposing to require compliance with this requirement, the FAA would standardize the presentation of exit markings for the benefit of ground rescue personnel at minimum cost. Compliance would be required within 1 year after the publication date of a final rule.

Section 121.310(h) requires airplanes for which the application for type certification was made before May 1, 1972, to meet the exterior emergency lighting standards of § 25.812, in effect on April 30, 1972, or any later standards in effect if the application for type certification was made later. The lighting is provided for two purposes. One is to preclude passengers from hesitating as they leave the airplane because they cannot see what they are stepping into. The other is to preclude injuries when the airplane has come to rest on uneven, rocky, or wooded terrain. The need for such lighting is not related in any way to the size of the airplane. The FAA proposes to require non-transport category airplanes type certificated after December 31, 1964 (i.e., part 23 normal and utility category)

to comply with § 25.812 in effect April 30, 1972, within 2 years after the publication date of a final rule.

The FAA proposes that airplanes with a passenger seating configuration of less than 20 seats previously operated under part 135 be required to comply with the above described emergency lighting systems (that is, emergency exit signs, interior lighting, exit handles, and exterior lighting) and, except for the marking requirement discussed above, proposes a compliance date 2 years after the publication date of a final rule. Because of the potentially high cost of this proposed retrofit requirement, the FAA invites comments on the feasibility of meeting these part 121 emergency lighting requirements and of alternative means of achieving an acceptable level of safety.

*Seatbacks.* Section 121.311 prohibits a certificate holder from taking off or landing unless passenger seats are in the upright position. Section 135.117 requires only that passengers be briefed that seats should be in the upright position. The FAA proposes that affected commuters be required to comply with § 121.311.

*Seat belt and shoulder harnesses on the flight deck.* Section 121.311(f) requires a combined seat belt and shoulder harness, with a single-point release that meets the requirements of § 25.785. Part 135 does not contain a requirement for a single-point release system although the FAA believes that virtually all commuter category airplanes being manufactured today have such a system. To ensure that this is the case for newly manufactured airplanes the FAA proposes to require that airplanes manufactured after 1 year after publication of final rule meet the requirements of § 121.311(f).

*Interior materials and passenger seat cushion flammability.* Section 25.853(b) was amended in 1984 to require seat cushions to meet greatly enhanced flammability standards. At the same time, §§ 121.312(b) and 135.169(a) (but not for commuter category airplanes) were amended to require airplanes already in service to meet the improved seat cushion flammability standards after November 1987. In the 7 years that have passed since that date, the improved cushions are credited with saving a number of passengers' lives.

The seat cushion flammability standards apply to all transport category airplanes regardless of the passenger capacity. In the case of an inflight cabin fire the probability that a fire would occur in a commuter or normal category airplanes is exactly the same as in a transport airplane. Once a fire occurs, occupants are presented with exactly the same hazards as in a transport category. The need for seat cushions meeting the same flammability standards, therefore, is exactly the same. Fires are generally caused by fuel tanks being ruptured during a crash. The improved seat cushion standards provide considerable additional protection in a postcrash fire; they also provide considerable protection for airplanes of all passenger capacities from inflight fires. Tests have shown that cushions meeting these standards are much less likely to ignite and sustain a flame than those that do not meet the standards. Preventing a fire from occurring is the best possible form of fire protection. If a fire does occur, compliance with the improved seat cushion flammability standards slows the spread of the fire through the cabin and provides more time to bring it under control. Therefore, the FAA proposes to require nontransport category airplanes type certificated after December 31, 1964, to comply with the same seat cushion flammability standards that apply to other airplanes operated under part 121. Compliance would be required by a date 2 years after the publication date of the final rule or on the first replacement of the cushions, whichever occurs first. The proposed rule would allow for granting deviations for up to 2 additional years when justified by unique integral-seat cushion configurations.

In addition to the flammability standards that already existed in part 25, that part was amended in 1986 to require large surface-area components (e.g., sidewalls, bulkheads, ceilings, etc.) to pass tests using the Ohio State University (OSU) radiant rate of heat release test apparatus. The OSU test requirements for large surface-area materials were not made applicable to airplanes with a seating capacity of 19 or less seats. For those airplanes, the flammability standards that previously existed in part 25 were considered adequate and appropriate. The costs of retrofitting existing airplanes now would not be commensurate with the minimal increase in safety that would result. However, the FAA finds that it is reasonable to propose that nontransport category airplanes newly manufactured after 4 years after the publication date of the final rule comply with § 121.312(a) by meeting the same large-surface area component flammability requirements currently required for transport category airplanes.

*Cockpit and door keys.* Section 121.313 requires that there be a lockable door between the cockpit and the cabin and that there be a key for each cockpit door that is readily available to each crewmember. Currently, part 135 does not address this issue. The FAA proposes that the affected commuters be required to comply with the part 121 rule if there is a door with a lock or a door that can be retrofitted with a lock. (Curtains or accordion doors are not considered lockable doors.) If a lockable door already exists or can be retrofitted, the certificate holder would be required to provide a cockpit key that is readily available to each crewmember. The language of § 121.313(f) would be changed to exclude airplanes that do not have cockpit doors.

*Cargo and baggage compartments.* Part 25 (as referenced in § 121.314) contains requirements for cargo or baggage compartment liners, smoke detection, and fire extinguishment for various classes of compartments. The compartment classification system, also duplicated in § 121.221 (which as previously discussed applies only to certain airplanes type certificated before November 1, 1946), is based on the compartment's accessibility for fire detection and extinguishment. Part 25 was amended in 1989 to require the liners of Class C and D compartments to meet more stringent flammability standards. Section 121.314 was also adopted at that time to require the improved liners in existing transport category airplanes on a retroactive basis.

Part 23 contains no classification system or requirements for compartment fire protection; however, a proposed rule to add comparable requirements was issued on July 22, 1994, (59 FR 37620). While the cost of providing liners, smoke detection, and fire extinguishers in the cargo or baggage compartments of existing part 23 airplanes would be prohibitive, the FAA believes that it would be appropriate to require liners, smoke detection, and fire extinguishment for remote cargo or baggage compartments in newly manufactured part 23 airplanes. Therefore, the FAA proposes to require this modification for commuter category (or its predecessor) airplanes manufactured 4 years or more after the publication date of the final rule.

There is no service history of specific problems from the absence of this equipment. Because of the potential high cost of compliance, the FAA specifically requests comments describing how this safety objective can be achieved, including alternatives such as requiring only liners and smoke detection. The FAA needs to obtain specific and detailed information concerning cost and other problems associated with this proposal in order to make an informed decision at the final rule stage of this rulemaking.

*Fuel tank access covers.* As a result of the 1985 Manchester British Air Tours accident (in which a piece of metal from the aircraft engine punctured the fuel tank access panel and created a fire), § 25.963(e) was amended in 1989 to require that all covers located in an area where a strike by foreign objects is likely must have as much resistance to fire or debris penetration as the surrounding structure. Concurrent with this amendment, § 121.316 was amended to require airplanes already in service to comply with § 25.963(e) on a retrofit basis. These requirements pertain to all transport category, turbine-powered airplanes. Due to their smaller size and turbo-propeller configuration, part 23 nontransport airplanes generally do not present the same hazard. Fuel tanks of current designs are located in the wings well aft of the strike zone of any engine debris. Also, these part 23 airplanes are likely to have access covers that provide no less resistance to fire or debris penetration than the surrounding wing structure. The FAA considers that it would be a waste of resources to require a demonstration of compliance. Therefore, the FAA does not propose to require part 23 nontransport airplanes to comply with §§ 25.963(e) and 121.316. Since § 121.316 applies only to ''turbine-powered transport category'' airplanes, no rule change is needed. The FAA points out that transport category airplanes previously operated under part 135 would have to comply with § 121.316.

*Oxygen requirements.* Sections 121.327 through 121.335 cover supplemental oxygen requirements and oxygen equipment requirements. The requirements are similar to the oxygen requirements in § 135.157 except that for certain airplanes, part 121 requires less oxygen. Each affected commuter who would have to comply with part 121 oxygen requirements as a result of this rulemaking should readily be able to operate its airplanes in accordance with the oxygen requirements specified in part 121.

*Portable oxygen for flight attendants.* Section 121.333(d) requires that each flight attendant shall, during flights above 25,000 feet, carry portable oxygen equipment with at least a 15-minute supply of oxygen, unless there are enough portable oxygen units with masks or spare outlets and masks are distributed through the cabin to ensure immediate availability of oxygen to each flight attendant, regardless of his or her location at the time of cabin depressurization. Part 135 does not have a similar requirement for portable oxygen for flight attendants. The FAA proposes that affected commuters who use flight attendants in their operations and that operate above 25,000 feet be required to comply with the part 121 requirement.

*Protective breathing equipment (PBE).* Section 121.337 contains requirements for equipping the flight deck and passenger compartments of transport category airplanes with PBE. Part 135 does not currently require any type of PBE.

There are two kinds of PBE with two sets of approval criteria. PBE may be portable or built into the airplane (fixed or sedentary). A PBE unit consists of an oxygen supply and facial protection, such as a full face mask, smoke hood, or face mask and goggles. A fixed or portable PBE is installed in the airplane for use by flight crewmembers while they are at their stations. Portable PBE that meets applicable criteria and is approved may be used on the flight deck and/or throughout the airplane.

Section 121.337(b)(8) requires PBE, either fixed or portable, to be conveniently located on the flight deck and easily accessible for immediate use by each flight crewmember. In addition, § 121.337(b)(9) requires that for combatting fires a portable PBE must be located on or close to the flight deck with easy access by each flight crewmember for fighting fires. A portable PBE in the passenger compartment must be located within 3 feet of each hand fire extinguisher. Both of these requirements provide that the Administrator may authorize another location if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

The proposed rule would require affected commuters to comply with the PBE requirements of § 121.337. To be in compliance, an airplane with a passenger-seating configuration of 10 to 19 seats would have to have at least three PBE: one PBE, fixed or portable, for each flight crewmember at their station, and an additional portable PBE on the flight deck for use in fighting fires. An airplane with a passenger-seating configuration of 20 to 30 seats would have to have at least four PBE: One PBE, fixed or portable, for each flight crewmember at their station; an additional portable PBE on the flight deck for fighting fires; and a portable PBE in the passenger compartment located within 3 feet of the required hand fire extinguisher.

The applicability of the current rule would be revised to include other than transport category airplanes. Section 121.337(b)(9)(iv) would also be revised to except airplanes having a passenger-seating configuration of fewer than 20 seats and a payload capacity of 7,500 pounds or less from the requirement to have a PBE in the passenger compartment. The exception is needed because these airplanes are not required to have a flight attendant; the portable PBE on the flight deck would be used by a flight crewmember for fighting a fire.

There are major safety benefits to requiring PBE. PBE prevents injury or death of crewmembers from smoke or harmful gasses and enables them to continue flying the airplane and assisting passengers. PBE decreases the likelihood of death or injury to passengers because crewmembers will not be incapacitated by smoke or harmful gasses and thus are able to continue to perform their duties. Finally, PBE allows crewmembers to fight fires without succumbing to smoke inhalation, thereby decreasing the risk of passenger injury and death. The FAA proposes to apply the PBE requirement to affected commuters because fires occur at least as frequently in airplanes used by affected commuters as they do in the larger airplanes currently operated under part 121. Fires can have worse effects in smaller airplanes because there is less room to move passengers away from the source of the fire. Also, since there is less cabin volume, the smoke may become worse more quickly.

The FAA proposes to require compliance with § 121.337 by a date 2 years after the publication date of the final rule.

*Additional life rafts for extended overwater operations.* Sections 121.339 and 135.167 require that airplanes engaged in extended overwater operations provide enough life rafts of a rated capacity and buoyancy to accommodate the occupants of the airplane. In addition, § 121.339 requires excess rafts so that all occupants of the airplane can be accommodated in the event of the loss of one raft of the largest rated capacity.

A life raft, which is approximately the size of a suitcase before it is inflated, is an important piece of survival equipment in an emergency ditching. Rafts facilitate rescue efforts by keeping passengers together and helping to prevent hypothermia. The FAA believes that the affected commuters that engage in extended overwater operations should be required to meet the part 121 requirements. As with current part 121 certificate holders, affected commuters can apply for waivers, and the FAA can decide, on a case-by-case basis, if a waiver is appropriate. These waivers are issued pursuant to § 121.339(a) which

permits the Administrator to allow deviation from the requirement to carry certain equipment for extended overwater operations. Since there are few extended overwater operations conducted by commuters, the FAA does not expect this proposed requirement to have a significant impact.

*Flotation devices.* Unless an airplane is equipped with life preservers, flotation cushions are required in § 121.340 for each passenger whenever an airplane is used in any overwater operation. In parts 121 and 135, life preservers are required only for extended overwater operations, (§§ 121.339 and 135.167). Therefore, airplanes used in extended overwater operations would already be equipped with life preservers, so they would not need to have flotation cushions. Section 121.340 has been applied so that virtually every airplane is equipped with either flotation cushions or life preservers, because it is practically impossible to operate any place without flying over a body of water of sufficient depth to require some sort of flotation means.

The advantage of requiring flotation means is that if an airplane crashes in the water, occupants would be provided some protection. Many of the most active airports have runways with takeoff or landing approaches over water. While ditchings (anticipated water landings) in the high seas are relatively rare events, crashes in the water at the end of runways are less rare and can result in drownings.

Therefore, the FAA proposes that airplanes equipped with 10 or more seats operating in scheduled passenger operations and not already equipped with life preservers be equipped with flotation cushions. To allow any replacement of seat cushions to be coordinated with the seat cushion flammability requirements of § 121.312(c), the FAA proposes a compliance date of 2 years after the publication date of the final rule.

*Pitot heat indication system.* Section 25.1326 requires a pitot heat indication system to indicate to the flightcrew when a pitot heating system is not operating. Part 23 currently requires pitot heat systems for airplanes approved for IFR flight or flight in icing conditions, but doesn't address the requirement for a pitot heat indication system. This new requirement applies to new type certification and will not affect existing in-service commuter airplanes or future production of currently approved commuter airplanes. Section 121.342 currently requires a pitot heat indication system on all airplanes that have a pitot heating system installed.

In recommendation A–92–86, the National Transportation Safety Board (NTSB) recommended that small airplanes certificated to operate in icing conditions and at altitudes of 18,000 feet mean sea level and above should be modified to provide a pitot heat operating light similar to the light required by § 25.1326. As recommended by the NTSB, part 23 is currently being amended to require such indication for commuter category airplanes (Notice 94–21, 59 FR 37620, July 22, 1994).

The FAA proposes to amend § 121.342 to require nontransport category airplanes type certificated after December 31, 1964, to incorporate pitot heat indication systems. Affected commuters would have to comply within 4 years after the publication date of this rulemaking.

*Flight data recorders.* Section 121.343 requires operators to equip certain airplanes with flight data recorders (FDR) that have certain data parameters. Section 135.152(a) requires FDR in multiengine turbine-powered airplanes with a passenger configuration of 10 to 19 seats that were brought onto the U.S. register after October 11, 1991. Section 135.152(b) requires FDR on multiengine, turbine-powered airplanes having a passenger seating configuration of 20 to 30 seats.

As discussed in the ''Major Issues'' section of this notice, the FDR requirements would continue unchanged under the proposal. Therefore, the current applicable requirements in part 135 would be moved into part 121 by reference in proposed § 121.344.

*Radio equipment.* Sections 121.345 through 121.351 cover radio equipment requirements. Part 121 specifies radio equipment requirements for operations under VFR over routes navigated by pilotage, for operations under VFR over routes not navigated by pilotage or for operations under IFR or over-the-top, and for extended overwater operations. The requirements are more specific and restrictive than those in § 135.161. The radio equipment requirements in part 121 are cumulative; that is, the regulations prescribe basic radio equipment requirements for VFR over routes navigated by pilotage and additional equipment for VFR over-the-top or IFR. Most part 121 operations are conducted under IFR. The proposed rule would require affected commuters to comply with part 121 radio equipment requirements. Because additional equipment would be required for VFR conditions in operations under part 121, the FAA requests comments on the appropriateness of the part 121 requirements for operations presently conducted under part 135 and, if inappropriate, commenter recommendations for alternate requirements.

*Emergency equipment for operations over uninhabited terrain.* Section 121.353 prescribes the emergency equipment needed for operations over uninhabited terrain areas for flag and supplemental air carriers and commercial operators. The requirements include pyrotechnic signaling devices, emergency locator transmitters (ELT's), and survival kits equipped for the route to be flown. Similar requirements exist in part 135 for airplanes having a passenger-seating configuration of more than 19 passengers. (§§ 135.177 and 135.178). The proposed rule would require compliance with § 121.353. Survival kits would be a new requirement for affected commuter operators of airplanes with 10 to 19 seats.

*Airborne weather radar.* Section 121.357 requires airborne weather radar equipment for transport category airplanes (except for C–46 airplanes). Similar requirements exist in § 135.175, which applies to large transport category airplanes. Section 135.173 allows for the use of either airborne weather radar equipment or approved thunderstorm detection equipment. As discussed in the ''Major Issues'' section of this notice, affected commuters would be required to have approved airborne weather radar equipment. The applicability language of part 121 would be revised accordingly.

*Low-altitude windshear systems.* Section 121.358 requires either low-altitude windshear warning and guidance systems or predicting systems on turbine-powered airplanes. The definition for turbine-powered airplanes in § 121.358(d) specifically excludes turbo-propeller-powered airplanes. As discussed in the ''Major Issues'' section of this notice, this requirement would not apply to affected commuter operators using turbo-propeller-powered or piston-powered airplanes.

*Cockpit voice recorders.* Section 121.359 requires cockpit voice recorders (CVR) on all large turbine-powered-engine airplanes and on large pressurized airplanes with four reciprocating engines. Section 135.151(a) requires one standard of CVR on all multiengine turbine-powered airplanes or rotorcraft having a passenger seating configuration of six or more and for which two pilots are required by type certification, and another standard for all multiengine turbine-powered airplanes or rotorcraft

having a seating configuration of 20 or more seats. As discussed in the ''Major Issues'' section of this notice, the proposal would not change current CVR requirements; and CVR language from part 135 would be incorporated to maintain existing part 135 requirements.

*Ground proximity warning system (GPWS).* GPWS provides a warning to the flightcrew when an airplane is dangerously close to the ground, allowing time for the flightcrew to take corrective action and avoid collision with the ground. These types of accidents are called controlled flight into terrain (CFIT) because they occur when the flightcrew is not aware that the airplane is dangerously close to terrain.

Section 121.360 requires GPWS on turbine-powered airplanes. Section 121.360(f) also requires a ground proximity warning-glide slope deviation alerting system that meets certain standards. Section 135.153 requires a ground proximity warning system for any turbine-powered airplane having a passenger-seating configuration of 10 or more seats. There is also a provision in § 135.153(b) that allows an airplane to be operated until April 20, 1996, without a GPWS if the airplane is equipped with an alternative system that conveys warnings of excessive closure rates with the terrain and if certain other requirements are met. Part 135 does not specifically require a glide slope deviation alerting system nor does it provide specific TSO standards as part 121 does.

Although the GPWS requirements in parts 121 and 135 appear to be different, any approved GPWS under part 135 would be capable of complying with part 121 standards. By April 20, 1996, which will precede the compliance date of this proposed rule, all affected commuter airplanes must have approved GPWS. Therefore, there will be no difference in the requirements as of the effective date of this proposed rulemaking.

VI.B.8. Subpart L—Maintenance, Preventive Maintenance, and Alterations

*Applicability.* Part 121 operators are required to adopt a continuous airworthiness maintenance program (CAMP), which has a proven track record for large transport category airplane. Under § 135.411(a)(2), airplanes that are type certificated for a passenger-seating configuration of 10 seats or more are already required to comply with a CAMP similar to part 121 requirements. The proposed rule would require all airplanes type certificated for 10 or more passengers to comply with part 121 CAMP requirements. These requirements are consistent with present-day maintenance standards and techniques to manage airplane airworthiness. The proposal to include affected commuters under part 121 maintenance requirements would not necessitate a revision to § 121.361.

Section 121.361(b) contains a deviation provision allowing certain noncertificated persons to perform maintenance. Affected commuters would now have this option available. Since many of the airplanes that are the subject of this rulemaking are manufactured outside the United States, this deviation provision would allow operators to have the original equipment manufacturers perform some overhauls and repairs.

*Responsibility for airworthiness.* Section 121.363 places the responsibility for the airworthiness of an airplane on the certificate holder. Under the proposal affected commuters would have to comply with § 121.363. A similar requirement appears in § 135.413. Section 135.413(a) requires a part 135 operator to have defects repaired between required maintenance under part 43. This provision does not appear in part 121. Part 121 operators are required to have defects repaired in accordance with their maintenance manual. As an FAA-approved maintenance manual requires no less than the part 43 requirements, affected commuters would experience no change in requirements.

*Maintenance, preventive maintenance, and alteration organization.* Section 121.365 requires the certificate holder to have an adequate maintenance organization for the accomplishment of maintenance, preventive maintenance, and alterations on its airplanes. The provision allows the certificate holder to arrange with another person to accomplish the work, provided that the certificate holder determines that the person has an organization adequate to perform the work. This provision requires separate inspection functions to ensure that those items directly affecting the safety of flight are verified to be correct by someone other than the person who performed the work. Since § 135.423 is essentially identical to § 121.365, there would be no change in requirements for affected operators. Affected operators would be required to comply with part 121.

The FAA recognizes that other provisions of this proposed rule, which would require affected operators to install new equipment and might lead to replacement of part 23 type certificated airplanes with part 25 type certificated airplanes, could necessitate that maintenance personnel (as required by this section and by §§ 121.367 and 121.371) have additional skills and training. The effect of these other provisions on maintenance costs is discussed in the regulatory evaluation summary in this notice.

*Maintenance, Preventive Maintenance, and Alterations Programs.* Section 121.367 establishes the requirement for a certificate holder to have an inspection program and a program covering other maintenance, preventive maintenance, and alterations. The rule provides for accomplishment of maintenance, preventive maintenance, and alterations in accordance with the certificate holder's manual regardless of whether the work is performed by the certificate holder or another person. The corresponding part 135 provision, § 135.425, is essentially identical. Affected operators would be required to comply with part 121.

*Manual requirements.* Section 121.369 requires the certificate holder to include in its manual a description of the organization required by § 121.365 and a list of persons with whom it has arranged for the performance of any required inspections, other maintenance, preventive maintenance, or alterations. The manual must contain the programs required by § 121.367, including the methods of performing required inspections, other maintenance, preventive maintenance, or alterations. This provision requires a certificate holder to provide a maintenance program in manual form to be used in its organization in the performance of maintenance, preventive maintenance, and alteration programs. This manual is necessary to ensure that the certificate holder has provided an adequate maintenance program for the airworthiness of its airplanes and to inform its personnel, or other persons who perform maintenance, of their responsibilities regarding the performance of maintenance on the airplane.

Section 135.427 is basically identical to § 121.369. Affected operators would be required to comply with part 121.

*Required inspection personnel.* Section 121.371 contains certain requirements for inspection personnel, including provisions for specific qualifications for and supervision of an inspection unit. Included is a requirement for listing persons who have been trained, qualified, and authorized to conduct required inspections. The persons must be identified by name, occupational title, and the inspections that they are

authorized to perform. This ensures that competent and properly trained inspection personnel are authorized to perform the required inspections. Section 135.429 has language that is similar to this section. Affected operators would be required to comply with part 121.

*Continuing analysis and surveillance.* Section 121.373 on continuing analysis and surveillance is in nearly all respects identical to the provisions of § 135.431. The FAA proposes that affected commuters would comply with § 121.373. Section 121.373 provides for the establishment by the certificate holder of a system to continually analyze the performance and effectiveness of the programs covering maintenance, preventive maintenance, and alterations. This section also provides for the correction of any deficiencies in those programs. Also included in this section is a provision whereby the Administrator may require the certificate holder to make changes in either or both of its programs described in paragraph (a) if those programs do not contain adequate procedures and standards to meet the requirements of this part. The requirement is necessary to provide feedback to the certificate holder on the certificate holder's programs covering maintenance, preventive maintenance, and alterations, so that deficiencies can be corrected. The requirement for a procedure providing for changes required by the Administrator is similar to procedures included in other parts of the Federal Aviation Regulations and ensures that deficient programs are corrected promptly. Since §§ 121.373 and 135.431 are basically identical, no new burdens would be imposed by the proposal to require affected operators to comply with § 121.373.

*Maintenance and preventive maintenance training programs.* Section 121.375 requires training programs that ensure that persons performing maintenance or preventive maintenance functions (including inspection personnel) are fully informed about procedures, techniques, and new equipment in use and that those personnel are competent to perform their required duties. This section is identical to § 135.433. Affected operators would be required to comply with part 121.

*Maintenance and preventive maintenance personnel duty time limitations.* Section 121.377 establishes the requirements for maintenance personnel to be relieved from duty for a period of at least 24 consecutive hours during any 7 consecutive days, or the equivalent thereof within any 1 calendar month. This requirement is for maintenance personnel within the United States. This provision would be a new requirement for affected commuters. The FAA believes that this provision to be a necessary safety precaution to ensure that maintenance personnel are provided adequate rest.

*Certificate requirements.* Section 121.378 requires that each person, other than a repair station certificated under the provisions of Subpart C of part 145, who is directly in charge of maintenance, preventive maintenance, or alterations, and each person performing required inspections, hold an appropriate airman certificate. The FAA determined when this provision was adopted for part 121 that it was necessary to ensure that the certificate holder uses maintenance personnel who have adequate knowledge of the regulations and hold an appropriate airman certificate. An identical requirement appears in § 135.435. The FAA proposes that affected operators would comply with part 121.

*Authority to perform and approve maintenance, preventive maintenance, and alterations.* Section 121.379 allows the certificate holder to have maintenance performed by other persons. The rule also permits a certificate holder to perform maintenance for other certificate holders. This provision allows the part 121 certificate holder some flexibility in scheduling and performing its maintenance by allowing the work to be performed by other persons when the certificate holder does not have the personnel or facilities available to perform certain maintenance. The rule requires that all major repairs and alterations must have been accomplished with data approved by the Administrator. Section 135.437 contains the same requirements. The FAA proposes that affected operators would comply with part 121.

*Maintenance recording requirements.* Section 121.380 provides for the preparation, maintenance, and retention of certain records using the system specified in the certificate holder's manual. The rule also specifies the length of time that the records must be retained and requires that the records be transferred with the airplane at the time it is sold. The requirements of §§ 135.439 and 121.380 are essentially identical so few new recordkeeping requirements would be imposed. A small change is necessary to § 121.380(a)(2) to accommodate propeller-driven airplanes used by some affected commuters. This proposed requirement is in § 135.439(a)(2)(i).

Section 121.380(a)(2)(v) would be amended to adopt the language found in § 135.439(a)(2)(v) to provide more complete records on airworthiness directive compliance. The current part 121 requirement does not specify maintaining in the records the times and dates for conducting recurring actions required by an airworthiness directive, although the FAA assumes that current part 121 certificate holders already do this. This is particularly important if ownership of an airplane is transferred.

*Transfer of maintenance records.* Section 121.380a requires the certificate holder to transfer certain maintenance records to the purchaser at time of the sale, in either plain language form or in coded form. The coded form must provide for the preservation and retrieval of information in a manner acceptable to the Administrator. The purchaser may permit the seller to keep physical custody of the records; however, custody by the seller does not relieve the purchaser of the responsibility under § 121.380(c) to make the records available for inspection by a representative of the Administrator or authorized representatives of the National Transportation Safety Board. The purpose of this section is to ensure that a new owner receives all the records that are to be maintained by an operator as required by § 121.380. This section is worded the same as § 135.441 except that the part 121 provision allows the purchaser to select the format of the transferred records.

The FAA notes that both § 121.380 and § 121.380a, and all other maintenance recordkeeping requirements, are being reviewed by an Aviation Rulemaking Advisory Committee (ARAC) that is studying ways to improve the recordkeeping requirements.

VI.B.9. Subpart M—Airman and Crewmember Requirements

Subpart M of part 121 and subparts E and F or part 135 contain airman and crewmember requirements. A discussion of the Age 60 Rule appears in the ''Major Issues'' section of this notice.

*Flight attendant complement.* The number of flight attendants required on airplanes varies depending on the seating capacity of the airplane. Section 121.391 requires one flight attendant for airplanes having a seating capacity of more than 9 but less than 51 passengers. Section 135.107 requires one flight attendant for airplanes having a passenger seating configuration, excluding any pilot seat, of more than 19 passengers.

Flight attendants are required on airplanes to perform essential routine and emergency safety duties. Routine duties include numerous items, such as passenger briefings and ensuring that carry-on baggage is correctly stowed. On larger airplanes flight attendants are needed in emergencies to operate emergency equipment and assist passengers in evacuating the airplane. Airplanes currently operated under part 121 are larger and heavier, the distance to the nearest emergency exit may be greater, and the emergency equipment is more complex to operate. Small airplanes are easier to evacuate than large airplanes and the close proximity of the flightcrew make handling inflight emergencies easier than on large airplanes. In addition, airplanes with passenger-seating capacities from 10 to 19 might have to install an additional seat for the flight attendant or dedicate a seat which could be revenue producing to provide a seat for a flight attendant. Not requiring flight attendants for commuter airplanes with a seating capacity of less than 20 passengers has not proven to be a safety hazard. Therefore, the FAA is retaining the requirement for a flight attendant for more than 9 passengers for current part 121 airplanes, but proposes to require a flight attendant for affected commuters only in airplanes with more than 19 passenger seats. This change would not have any effect on current part 121 certificate holders and would not impact the affected commuters since it is the current standard for part 135.

*Flight attendants being seated during movement on the surface.* Section 121.391(d) states that during movement on the surface, flight attendants must remain at their duty stations with safety belts and shoulder harnesses fastened except to perform duties related to the safety of the airplane and its occupants. Part 135 has a similar provision in § 135.128(a), except that it does not specify that flight attendants may be performing safety duties during movement on the surface. The FAA proposes that the affected commuters with flight attendants comply with the part 121 rules and that flight attendants be allowed to perform safety related duties, such as ensuring that passenger seat belts are fastened and conducting passenger briefings, during movement on the surface.

*Flight attendants or other qualified personnel at the gate.* Section 121.391(e) requires that a specified number of flight attendants be on board the airplane when it is parked at the gate and passengers are on board and that the number of flight attendants cannot be reduced unless certain conditions are met. It also allows the use of ''substitutes'' providing they are qualified. Part 135 does not have requirements on flight attendants at the gate, although commuter operators may have policies preventing unattended passengers when the airplane is parked at the gate. The FAA proposes that all airplanes being operated by affected commuters be required to comply with current § 121.391(e); that is, they must have a flight attendant or substitute (such as a flight crewmember) on board when the airplane is parked at the gate and passengers are on board. The substitutes must be given training in the emergency evacuation procedures for that airplane as required by § 121.417 and they must be identified to the passengers. If there is only one flight attendant or other qualified personnel on board the airplane, that person must be located in accordance with the certificate holder's FAA-approved operating procedures.

Since as a result of this proposed rule § 121.391(e) would apply in the future to operations that do not use flight attendants, the FAA proposes to move paragraph (e) to a new separate section, proposed § 121.393, to highlight the crewmember requirements that apply when an airplane is on the ground and will continue to another destination.

*Aircraft dispatchers.* Section 121.395 requires that each domestic and flag air carrier shall provide enough qualified aircraft dispatchers at each dispatch center to ensure proper operational control of each flight. This would be a new requirement for affected commuters. It is associated with compliance with the dispatch requirements of part 121, which is discussed in the ''Major Issues'' section of this preamble.

VI.B.10. Subparts N and O—Training Program and Crewmember Qualifications

There are no proposed revisions to these subparts in this notice except that § 121.435 would be removed. It is an obsolete requirement since helicopters are no longer operated under part 121. See discussion of a recent proposal to these subparts in the ''Recent FAA Actions'' section of this notice.

VI.B.11. Subpart P—Aircraft Dispatcher Qualifications and Duty Time Limitations: Domestic and Flag Air Carriers

The requirements in § 121.463 of subpart P would be revised to clarify where an observer is to sit if the airplane does not have a jump seat on the flight deck.

VI.B.12. Subpart Q—Flight Time Limitations and Rest Requirements: Domestic Air Carriers

A discussion of this subpart appears in the ''Major Issues'' section of this notice.

VI.B.13. Subpart R—Flight Time Limitations: Flag Air Carriers

A discussion of this subpart appears in the ''Major Issues'' section of this notice.

VI.B.14. Subpart S—Flight Time Limitations: Supplemental Air Carriers and Commercial Limitations

A discussion of this subpart appears in the ''Major Issues'' section of this notice.

VI.B.15. Subpart T—Flight Operations

This subpart prescribes requirements for flight operations applicable to all certificate holders except as otherwise specified. The requirements include responsibility for operational control, passenger briefings, use of oxygen, carry-on baggage, use of certificated airports, and other requirements.

*Operational control.* Sections 121.533 and 121.535 require each domestic and flag operation to be responsible for operational control and specifies the responsibilities for aircraft dispatchers and pilots for each flight release. These would be new requirements for affected commuters. Section 121.537 contains the requirements for operational control for supplemental operations. While the requirements for domestic and flag operations are based on a dispatch system, the requirements for supplemental operations are based on a flight following system. For all three types of operations the requirements in part 121 for operational control are more detailed and provide better guidance than those in part 135 (§§ 135.77 and 135.79). Part 121 assigns specific responsibilities to the pilot in command and the aircraft dispatcher, clearly stating these requirements and how operational control is to be implemented. In part 135, the certificate holder must list names and titles of those responsible for operational control, but there are no specific requirements. Operational control is critical to flight safety and the requirements in part 121 would provide a higher level of safety for affected commuters.

*Admission to the flight deck.* Section 121.547 specifies who may be admitted to the flight deck of a passenger-carrying airplane. The part 121 section is similar to but more detailed than § 135.75, which applies to the admission of FAA inspectors to the pilots' compartment,

except that § 121.547 provides for additional types of persons who may be admitted.

*Emergency procedures.* Parts 121 and 135 require that, when the certificate holder or PIC knows of conditions that are a hazard to safe operations, the operation must be restricted or suspended until the hazardous conditions are corrected. (See §§ 121.551, 121.553, and 135.69.) In addition, § 135.69(b) provides for the PIC to continue a flight towards an airport where hazardous conditions exist if (1) it may be reasonably expected that by the time of estimated arrival the conditions will have been corrected, or (2) there is no safer procedure. In the latter event, continuation is an emergency situation under § 135.19 (subsumed by proposed § 119.58), which allows the PIC to deviate from the rules of the part to the extent required to meet the emergency.

Sections 121.557, 121.559, and 135.19 on emergency procedures would be removed from this subpart and covered in proposed part 119.

Section 121.565 would be a new requirement for affected commuters now operating under part 135. This section requires a pilot in command to take certain actions in the event of an engine failure, such as to land at the nearest suitable airport, to report the engine failure to the appropriate ground station and keep the station informed of the flight's progress, and to send a written report to the operations manager (or other, as specified) if the pilot has not landed at the nearest suitable airport after the engine failure.

*Passenger information.* Both parts 121 and 135 contain requirements for the oral briefing of passengers on the use of seatbelts, smoking, and the location and use of emergency exits and equipment (see §§ 121.571, 121.333, 121.573, 121.585, 135.117, 135.127). The oral briefing must be supplemented by printed cards for each passenger and must contain diagrams showing emergency exits and additional instructions. The passenger information rules in parts 121 and 135 are similar, but part 121 is more specific in some respects, while part 135 is more specific in others. The FAA proposes to amend § 121.571(a) to bring over from § 135.117 requirements for additional passenger information for airplanes with no flight attendant. This additional information includes instructions on location of survival equipment, location and operation of oxygen equipment, location and operation of fire extinguishers, and placement of seat backs in an upright position for takeoffs and landings. The FAA proposes that the affected commuters otherwise comply with the part 121 rules on passenger information. The printed cards would need to be revised or supplemented to provide information on flotation cushions or other required flotation devices once they are installed.

A small change is proposed for § 121.571(a)(3) to allow a flight crewmember (instead of a flight attendant) to provide an individual briefing of a person who may need assistance in the event of an emergency, in cases where an airplane does not have a flight attendant.

*Oxygen for medical use by passengers.* Section 121.574 provides that a certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen if, among other requirements, the equipment is furnished by the certificate holder. Under current § 135.91, the certificate holder may allow a passenger to carry and operate equipment for dispensing oxygen provided certain requirements are met. In addition, under part 121, the equipment must be part of a certificate holder's maintenance program; under part 135 it is required as part of the certificate holder's maintenance program only if the certificate holder owns the equipment. Section 135.91(d) contains a provision for permitting a noncomplying oxygen bottle provided by medical emergency service personnel to be carried on board the airplane; this provision would not be carried forward into part 121.

Part 121 requires the certificate holder to supply the oxygen to ensure that internal contamination of the pressurized oxygen does not occur. The contamination of the cylinder with a flammable material (grease, oil) could result in a serious fire or explosion when these cylinders are operated on a pressurized airplane. Under the proposal, the FAA would limit the use of oxygen units to those maintained by the air carrier as is presently provided in § 121.574. Most of the airplanes operated by the affected commuters are pressurized and frequently operate above 10,000 feet. The operating conditions and safety concerns are similar for part 121 operators and the affected commuters.

*Alcoholic beverages.* Sections 121.575 and 135.121 contain requirements controlling the serving or consumption of alcoholic beverages on airplane. The requirements are similar except for three additional requirements in § 121.575. Certificate holders are prohibited from serving alcohol to persons who have legal access to armed weapons and to persons who are being escorted by an armed law enforcement escort. Also, part 121 requires certificate holders to report any disturbances caused by people who appear to be intoxicated. Since these differences are minor and are not expected to impose a burden on affected commuters, the FAA proposes that affected commuters comply with the requirements of § 121.575.

*Retention of items of mass.* Section 121.576 requires that airplanes must have a means to prevent each item of galley equipment and each serving cart, when not in use, and each item of crew baggage, which is carried in the crew or passenger compartment, from becoming a hazard. Section 121.577 prohibits a certificate holder from moving an airplane on the surface or taking off unless such items are secure. Sections 135.87 and 135.122 require certificate holders to ensure that such items are secure before takeoff. The FAA proposes that the affected commuters comply with § 121.577, which is substantively the same as § 135.122.

*Cabin ozone concentration.* Section 121.578 sets maximum levels of ozone concentration inside the cabins of transport category airplanes operating above 27,000 feet. Commuter (and predecessor) airplanes do not, generally, operate at these altitudes; nevertheless, the FAA believes that these rules should apply whenever the altitudes are exceeded. The FAA proposes to amend § 121.578(b) to delete the references to transport category airplanes. Section 121.578(d) contains deviation authority if the certificate holder shows that compliance with the current rule is unreasonable either because of circumstances beyond its control or because of an unreasonable economic burden.

*Minimum altitudes for use of autopilot.* Sections 121.579 and 135.93 establish minimum altitudes for use of autopilots. The two sections are similar; however, part 135 does not specify weather requirements for an approach. In a current NPRM proposing to revise the minimum altitude for use of an autopilot (59 FR 63868, December 9, 1994), which is under consideration for the minimum altitude for autopilot use corresponds to the type certificate of the autopilot and altitude stated in the Airplane Flight Manual (AFM). If accepted as proposed, the AFM would establish guidance that would be edited and approved in the air carriers operations specifications.

*Forward observer's seat.* Section 121.581 requires a certificate holder to make available a seat on the flight deck of each airplane for use by the Administrator while conducting en route inspections. Comparable § 135.75 requires, for such inspections, a forward

observer's seat on the flight deck or a forward passenger seat with headset or speaker. Because airplanes in the 10- to 30-seat range may not have an observer's seat on the flight deck, the option of providing a forward passenger seat would be moved into part 121.

*Authority to refuse transportation.* Section 121.586 prohibits a certificate holder from refusing transportation to a passenger on the basis that the passenger will need the assistance of another person to move quickly to an exit in the event of an emergency, unless the certificate holder has established procedures for the carriage of such passengers and the passenger either fails to comply or cannot be carried in accordance with the procedures. Part 135 does not specifically prohibit a certificate holder from refusing transportation to such passengers nor does it specifically require procedures; however, § 135.23(q) requires that the certificate holder's manual contain procedures for the emergency evacuation of passengers who may need assistance. Because these procedures are currently required as part of the manual requirements of part 135, § 121.586 would not pose any burden on the certificate holder; rather it would clarify the conditions under which a certificate holder may refuse transportation.

*Carry-on baggage.* Requirements for the stowage of carry-on baggage aboard airplanes are found in §§ 121.589 and 135.87. There are three significant differences between the requirements in parts 121 and 135.

First, part 121 requires certificate holders to have an approved carry-on baggage program with which both the certificate holder and the passengers are required to comply.

Second, part 121 requires that carry-on baggage be scanned before boarding to ensure the size and amount of baggage is consistent with the program.

Third, no certificate holder may allow all passenger entry doors of an airplane to be closed in preparation for taxi or pushback unless at least one required crewmember has verified that each article of baggage is stowed in accordance with the requirements of that certificate holder's program.

The FAA proposes that the certificate holders upgrading to part 121 as a result of this NPRM would comply with the part 121 carry-on baggage rules. This would require the preparation and approval of a carry-on baggage program. Variations in the types of airplanes used or crewmember complement can be addressed in the program. For instance, procedures for stowing baggage on airplanes having overhead racks that are not certificated for carriage of carry-on baggage or cargo would be specified. Procedures for scanning baggage would be spelled out in the program, according to the type of operation. In addition, crewmember responsibilities for stowage of baggage for operations that do not require a flight attendant would be addressed. This program is necessary to assure that all certificate holders operating under part 121 have procedures to prevent an airplane from taking off with baggage that has not been properly stowed.

*Airports.* Section 121.590 provides that air carriers and pilots operating under part 121 must operate an airplane into a land airport that is certificated under part 139. As discussed under the ''Major Issues'' section of this notice, the proposed rule language would allow affected commuters into and out of other than part 139 airports pending legislation that would authorize the FAA to regulate airports (in a future rulemaking) that serve passenger-carrying operations of airplanes having a seating capacity of less than 30 passengers. Section 121.590 would be revised to incorporate pertinent requirements of § 135.229.

VI.B.16. Subpart U—Dispatching and Flight Release Rules

Subpart U, in conjunction with sections of subpart T, prescribes dispatching and flight release rules for domestic and flag operations. Sections 121.533, 121.535, and 121.537 prescribe who has operational control of flights for domestic, flag, and supplemental part 121 operations. In addition, §§ 121.533 and 121.535 require flight releases before a flight can take off. Subpart U prescribes who has dispatch and flight release authority, requires flight releases for supplemental operations, and specifies requirements rules for flight releases under certain conditions. All of these rules would be new requirements for all affected commuters.

*Flight release authority: Supplemental.* Section 121.597, which applies to supplemental operations, requires a flight release signed by the pilot when the pilot and the person authorized by the certificate holder to exercise operational control believe that the flight can be made safely. This would be a new requirement for affected commuters who conduct supplemental flights. Under part 135 releases are not required for either scheduled or on-demand flights.

*Dispatch or flight release under VFR.* Section 121.611 states that no person may dispatch or release an airplane for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, are and will remain at or above applicable VFR minimums until the airplane arrives at the airport. Part 135 does not have a comparable release requirement, though for VFR over-the-top carrying passenger operations (§ 135.211), no person may operate an airplane unless weather reports or forecasts indicate that the weather at the intended point of termination meets certain visibility requirements.

*Operations in icing conditions.* Section 121.629 contains requirements for operations in icing conditions. This section requires a certificate holder to have an approved ground deicing/anti-icing program, and the certificate holder, including all personnel assigned duties, must comply with that program. The regulations prescribe the general content of the program, including what must be covered in ground training for flight crewmembers and other personnel. Section 121.629(d) provides that, in lieu of the program, a certificate holder may conduct a check from outside the airplane when conditions are such that frost, snow, or ice may adhere to airplane surfaces.

Section 135.227 prescribes the requirements for takeoff in icing conditions for part 135 operations. Parts 135 and 121 are similar. Part 135 allows the carrier the option to comply with part 121 deicing/anti-icing program requirements. Most affected commuters already comply with part 121 program requirements. Part 135 states that the certificate holder may not authorize a flight to takeoff in icing conditions unless the pilot has received the applicable training under § 135.341; the training requirements for part 121 (§ 121.629) and part 135 (§ 135.345) are identical. Under part 135, having a deicing/anti-icing program is only one of the options for taking off in icing conditions; other options are conducting a pretakeoff contamination check or having an approved alternative procedure. Since most of the affected commuters already have an approved deicing/anti-icing program that complies with part 121 requirements, the proposed rule would require all affected commuters to comply with the part 121 requirements.

*Fuel reserves.* Sections 121.639, 121.641, 121.643, and 121.645 contain fuel reserve requirements based on the type of operation to be conducted. These fuel reserve requirements do not distinguish between VFR and IFR operations. Section 121.639 requires 45 minutes of fuel reserve for domestic air carriers and for certain other air carrier operations.

Section 135.209 requires 30 minutes of fuel reserve for day VFR conditions and 45 minutes for night VFR conditions. Section 135.223 requires 45 minutes for IFR conditions.

The FAA proposes to require affected commuters to comply with the fuel reserve requirements of part 121 but recognizes that the proposed change could have an impact on operators that conduct operations in VFR conditions. Under the proposal these operations would have to have an additional 15 minutes of fuel reserve to be in compliance. The FAA invites comments on the impact the proposal would have on operators that conduct operations in VFR conditions.

VI.B.17. Subpart V—Records and Reports

Subpart V prescribes requirements for the preparation and maintenance of records and reports for all certificate holders operating under part 121. Although many of the requirements are identical to or similar to the recordkeeping requirements in §§ 135.63 and 135.65, part 121 requires additional information, including new records and reports. For instance, additional load manifest information is required under part 121.

Under the proposal, the most significant change in recordkeeping requirements would be the addition of records required in part 121 for a dispatch system. These include maintaining aircraft dispatcher records and dispatch release records. Affected commuters would be required to comply with all applicable dispatch recordkeeping requirements in subpart V.

Section 121.689 prescribes the requirements for flight release forms for supplemental operations under part 121. These requirements would be new for affected commuters who would conduct on-demand type operations under part 121 supplemental rules.

*Maintenance log: Airplane.* Section 121.701 requires that an airplane maintenance log be used to record the occurrences of mechanical irregularities and deferred maintenance items. The airplane maintenance log is required to be kept in the airplane. Both §§ 121.701(a) and 135.65(c) require that any person taking action concerning a reported or observed failure or malfunction of the airplane must record that action in the airplane maintenance log. The certificate holder is required to establish and include in its manual a procedure for keeping adequate copies of the log in the airplane. Section 135.65 additionally requires the pilot in command to ensure the status of each irregularity entered in the maintenance log. The FAA is not proposing that this requirement be added to part 121 because under existing part 121 rules, no airplane can be dispatched without a maintenance release that accomplishes the same purpose.

Mechanical reliability reports. The provisions of § 121.703(a) and § 135.415(a) that require mechanical reliability reports are virtually identical except for §§ 135.415(a)(12) and 121.703(a)(17). Subparagraph (a)(12) of § 135.415 provides the qualification that the landing gear extension should be ''unwanted.'' The FAA proposes to adopt the part 135 language because the FAA is concerned with unplanned in-flight extensions of the landing gear. The § 121.703(a)(17) provision on emergency evacuation systems required under the proposal, which is absent from the corresponding part 135 rule, would be adopted for affected commuters. The part 121 standard is proposed because the FAA needs to know about all potentially defective evacuation systems so that the defect would be immediately corrected.

Paragraph 121.703(e) on transmitting reports is more detailed than the equivalent paragraph in part 135. Part 121 additionally requires records of the flight number and stage, the emergency procedures effected, the nature of the failure, the repair status of the affected part, and whether the airplane was grounded. The FAA is proposing to require that affected commuters follow the more detailed requirements of part 121 because the additional data would add information to the database. These reports would enhance the airplane airworthiness standards that are monitored to ensure that corrective action can be taken if unsatisfactory trends develop. The remaining provisions of § 135.415 are the same as those in § 121.703.

Paragraph (f) would be amended to delete an obsolete reference to § 37.17, which no longer exists in the regulations.

*Mechanical interruption summary report.* Section 121.705 requires that these mechanical interruption summary reports be submitted ''regularly and promptly'' but does not clearly define the standard for the timeliness of the submission. Part 121 operators have for many years had maintenance manual requirements that essentially required that these reports be submitted on a monthly basis. The equivalent part 135 requirement specifically calls for the monthly submission of these reports. The FAA proposes to require that affected commuters comply with the part 121 requirement in order to have the timing established in the operator's manual which allows for differences among operators. Section 121.705(b) contains a requirement that is not found in the corresponding § 135.417 section. That provision requires reporting premature engine removals. The FAA proposes to require affected commuters to comply with this requirement because of a need to track the reliability of engines. The FAA maintains a database of premature engine removals that would allow operators to predict engine life or the possible development of fleet-wide problems. Initially this database was limited primarily to part 121 operators of large airplanes with new engines. The FAA is expanding this database to cover most engine types. This provision provides for reporting mechanical interruptions that are not reported under other sections. The FAA needs these reports to obtain data by which airplane airworthiness standards are monitored and to ensure that corrective action can be taken if unsatisfactory trends develop.

*Alteration and repair reports.* Section 121.707 requires part 121 operators to submit to the FAA a copy of a report of each major alteration or major repair. Although corresponding § 135.439(a)(2)(vi) requires the retention of these reports but does not specifically require that they be submitted to the FAA, they are required to be submitted under part 43. Therefore, under the proposal affected commuters would comply with the requirements of § 121.707.

*Airworthiness release or airplane log entry.* Section 121.709 requires the certificate holder to prepare or cause to be prepared either an airworthiness release or an appropriate entry in the airplane log after the performance of maintenance, preventive maintenance, or alterations. The airworthiness release or log entry must be prepared in accordance with the procedures set forth in the certificate holder's manual. The current requirements in § 135.443 essentially mirror the requirements of § 121.709 so there would be minimum burden for affected commuters. Section 121.709(c) contains a provision that is not found in part 135. That provision requires that a copy of the airworthiness release be given to the pilot in command and that a certificate holder retain a copy for at least 2 months. The proposed rule would require affected commuters to comply with this provision. The FAA considers that this additional requirement is necessary to provide a system for the flightcrew to determine the airworthiness status of an airplane after maintenance has been performed and to determine the

airworthiness of the airplane prior to flight. The person providing an airworthiness release or airplane log entry is required to determine that all the requirements for inspection and airworthiness are satisfied.

*Other recordkeeping requirements.* New recordkeeping requirements for affected commuter operators, which the FAA does not believe would impose a significant burden, would be § 121.711, which requires a record of each en route radio contact between the air carrier and its pilots; § 121.713, which requires commercial operators to keep copies of contracts; and § 121.715, which requires reporting of in-flight medical emergencies.

*VI.C. Proposed Part 119 Explanation*

New part 119 was originally proposed in 1988 (53 FR 39853; October 12, 1988). It is being entirely republished in this NPRM because of the number of changes the FAA has made in the proposed rule language since 1988. The changes that are the result of the review of commuter operations are discussed earlier in the preamble under ''Changes to part 119 as a result of this NPRM.'' In this section of the preamble the organization and substance of the entire part are summarized, along with an explanation of changes to the proposed rule language that have been made since 1988.

The first objective of the proposed rule is to establish a permanent guide in a new part 119 that would enable persons who provide transportation of people or cargo to determine what certification, operations, maintenance, and other regulatory requirements they must comply with. A second objective is to determine certification and operating requirements.

This proposed rule does not address the certification rules found in parts 125, 133, or 137.

The proposed rule would accomplish the following:

(1) Incorporate SFAR 38–2 into a new part 119 as Subparts A and B;

(2) Revise certification procedures now in parts 121 and 135 and consolidate them in a new part 119 as Subpart C;

(3) Revise wet leasing requirements;

(4) Provide definitions for terms such as ''direct air carrier'' and ''kind of operation;''

(5) Provide a roadmap for certificate holders to lead them to the operating rules in part 121, 125, or 135 that they must comply with for the kind of operations that they conduct;

(6) Clarify the requirements for operations specifications by adding definitions for terms such as ''domestic operation'' and ''supplemental operation;''

(7) Add management requirements for domestic and flag operations conducted under part 121 consistent with those that now exist for supplemental operations conducted under part 121, and consolidate part 121 and part 135 management requirements;

(8) Rescind part 127 and any requirements that pertain solely to helicopters in part 121, Subparts A through D; and

(9) Throughout part 121, Subparts A through D and part 135, Subpart A, change various references from CAB requirements to DOT requirements, change language where needed, and make incidental editorial changes.

In accomplishing the above changes, the FAA has edited current regulatory language for clarity and consistency.

*Organization of New Part 119.* Proposed new part 119 reorganizes into one part many requirements that now exist in SFAR 38–2 and in parts 121 and 135. Subpart A of proposed part 119 sets forth in general terms the applicability of the part, requirements and prohibitions covered by the part, definitions for terms used in Subchapter G, the types of certificates issued, and general provisions concerning operations specifications. Subpart B provides the guidelines and benchmarks which determine what operating requirements apply to each kind of operation. Among other things, subpart C updates and consolidates into a central location the certification rules now found in SFAR 38–2 and in parts 121 and 135. These subparts are discussed in more detail below.

Subpart A—General

Proposed Subpart A provides that part 119 would apply to persons operating or intending to operate civil aircraft as an air carrier or commercial operator conducting passenger operations, cargo operations, or both. A person would be issued only one certificate and all operations would be conducted under that certificate regardless of the kind of operation or the class or size of the aircraft. Persons authorized to conduct operations as an air carrier (i.e., in interstate, overseas, and foreign common carriage) would be issued an Air Carrier Certificate, currently referred to as ''Air Carrier Operating Certificate.'' Persons who conduct intrastate common carriage operations, persons who conduct non-common carriage operations as a commercial operator, and persons conducting certain other operations not involving common carriage would be issued an Operating Certificate.

The FAA would issue operations specifications reflecting the kind of operations to be conducted. The operations specifications would prescribe the authorizations, limitations, and procedures under which each type and size of aircraft would be operated.

The FAA would not issue certificates to foreign air carriers but would continue to issue operations specifications in accordance with part 129 to foreign air carriers who possess economic authority to conduct common carriage operations within the United States.

*Section 119.3—Definitions.* To clarify which operational rules apply to specific kinds of operations, proposed § 119.3 defines several terms. Many of the aspects of these new definitions related to this NPRM, e.g., ''scheduled operation,'' ''domestic operations,'' ''flag operations,'' ''supplemental operations,'' ''on-demand operations,'' and ''commuter operations'' have been previously discussed. Commenters should note that in this proposal the FAA has attempted to include in the definition of ''scheduled operation'' elements that would distinguish it from nonscheduled operations for compensation or hire in common carriage. The FAA considers the distinguishing factors of a scheduled operation are that departure location, arrival location, and departure time are determined by the certificate holder, and the certificate holder offers such operations in advance (i.e., holds out). In contrast, a nonscheduled common carriage operation for compensation or hire, i.e., on-demand operations and supplemental operations, are characterized by a negotiation in which the customer or customer's representative negotiates the departure, departure time, and arrival location. The only holding out that a nonscheduled common carriage operator might engage in would be letting others know that it would be available for such things as charter flights and other operations in which departure time, departure location, and arrival location are negotiated.

Many of the other definitions are carried over from SFAR 38–2 and are self-explanatory. Some terms and definitions, however, would be modified from SFAR 38–2 to make them consistent with this codification and the changes affecting commuter operations. Under SFAR 38–2, the following terms are used: ''domestic air carrier,'' ''supplemental air carrier,'' and ''commuter air carrier.'' In this proposal, domestic operation, supplemental operation, and commuter operation would cover not only air carriers, but

also intrastate commercial operators engaged in common carriage. The proposed definition for ''domestic operation'' includes intrastate common carriage operations within Hawaii and Alaska, which presently follow the rules for flag operations. This change would standardize the requirements for all U.S. operators conducting intrastate scheduled operations under part 121.

The FAA proposes to introduce a new definition—''noncommon carriage''—to more clearly recognize and distinguish that certain operations for compensation or hire are accomplished without a prior holding out. For instance, many operations that are conducted under part 125 are ''noncommon carriage'' in that the customer pays for the transportation by air, but the operator neither held out a schedule of flight times nor held out that it was available for negotiating departure time, departure location, and arrival location. It should be noted, however, that part 125 operations are not limited to noncommon carriage operations. Assuming an airplane has a seating configuration of 20 or more passenger seats or maximum payload capacity of 6,000 pounds or more, part 125 applies in situations ''when common carriage is not involved.'' The FAA believes that it is important to clarify the meaning of ''when common carriage is not involved'' and its regulatory twin ''operations not involving common carriage.'' Both of those phrases mean not only ''noncommon carriage'' but also operations in which persons or cargo are transported without compensation or hire and operations not involving the transportation of persons or cargo. Readers are reminded that for those airplanes that are usually used by certificate holders in parts 121, 135, or 137 operations, part 125 does not apply when those airplanes have no passengers or cargo (certificate holders operate such flights under part 91). Additionally, part 125 does not apply in other situations where part 91 alone applies, e.g., an exclusive flight for the free transportation of company employees.

The FAA is proposing a new term—''wet lease.'' Existing § 121.6 describes a wet lease situation without using the ''wet lease'' term. This situation describes a lease involving an airplane and at least one pilot flight crewmember. In the proposed new term, a wet lease would be defined as one involving the lease of an entire airplane and at least one crewmember. Thus, if a person leases an airplane and any crewmember (e.g., flight attendant, flight engineer, or pilot), it would be considered a wet lease. For an articulation of how this new definition applies operationally, see the discussion concerning § 119.53.

The definition of ''direct air carrier'' is included in this NPRM because the FAA finds it necessary to make a distinction between the direct air carrier, with operational control over flights, and the indirect air carrier (for example, a freight forwarder) who is not authorized to exercise operational control over flights.

New definitions have also been added for clarity, such as definitions for ''passenger carrying,'' ''principal base of operations,'' and ''kind of operation.''

The proposed definitions also include terms which would enable operators to distinguish clearly among kinds of operations. The FAA has noted confusion over certain terms in the past and intends to eliminate the confusion by defining the proposed terms clearly and, where needed, including clarification in Subpart C certification requirements.

''Maximum payload capacity.'' In January 1995, the FAA issued a draft Advisory Circular (AC) 120–27c, ''Aircraft Weight and Balance Control,'' containing proposed guidance for determining the standard average weights for crewmembers. The proposed standard average weights were based on recent data obtained from air carrier surveys. The FAA proposes to amend the current standard allowance for crewmembers—200 pounds for each required crewmember. The proposed standard allowances for crewmembers would be 180 pounds for male flight attendants, 130 pounds for female flight attendants, or 140 pounds average for all flight attendants. In addition, for male flight crewmembers, the standard average weight would be 180 pounds each, and for female flight crewmembers, 130 pounds each. These standard average weights do not include any carry-on baggage. If this NPRM concerning the standard average weights for crewmembers is not adopted, the FAA would amend the draft AC to reflect the existing regulations that specify a weight allowance of 200 pounds for each required crewmember. Thus, the final AC would accurately reflect what the regulations allow.

As used within the proposed part, these definitions, in conjunction with proposed changes to certification requirements that would be incorporated in Subpart C, would clarify which operators must obtain Air Carrier Certificates or Operating Certificates.

*Section 119.5—Certifications, authorizations, and prohibitions.* In general, § 119.5 (a), (b), and (c) identify the type of certificate—an air carrier certificate or an operating certificate—the Administrator would issue to different persons depending on the nature of their operations. In § 119.5(d), the FAA proposes to issue only one certificate to an operator engaging in common carriage, regardless of the kind of operation or the class or size of the aircraft to be operated. For example, if an operator used Boeing 757 aircraft in scheduled operations both within the U.S. and abroad, that operator would be issued one air carrier certificate and that certificate with its operations specifications would authorize these two kinds of operation (i.e., domestic and flag). If that same operator used airplanes with a seating capacity of 9 or less passenger seats in scheduled operations and used another make and model airplane in nonscheduled common carriage operations, only one air carrier certificate would be issued, but the certificate and the operations specifications would contain two additional kinds of operations, i.e., commuter and on-demand. See §§ 119.37(f) and 119.49 (a)(5), (b)(5), and (c)(4).

In § 119.5(e), the FAA proposes to issue only one certificate to an operator engaging in noncommon carriage, regardless of the kind of operation, or the class or size of the aircraft to be operated. Thus, a person who conducts noncommon carriage operations with aircraft configurated with more than 20 passenger seats or a payload capacity of 6,000 lbs. or more, (for which part 125 would apply) and also aircraft configurated with fewer than 20 passenger seats or a payload capacity of less than 6,000 lbs. (for which part 135 would apply) would only be issued one operating certificate.

Under § 119.5(f), a person conducting more than one kind of operation must conduct each operation in accordance with the FAR applicable to the kind of operation and the operations specifications issued for the kind of operation.

In § 119.5(h), the FAA proposes to prohibit a person who holds an operating certificate authorizing noncommon carriage from conducting any operation in common carriage. Similarly, the FAA proposes that a person holding an air carrier certificate or an operating certificate authorizing common carriage operations shall not conduct any noncommon carriage operations. The essential difference between a common carriage operation and a noncommon carriage operation is the presence or absence of a holding out. The FAA believes that an operator engaged in common carriage (holding out) cannot unequivocally claim that it

can engage in a noncommon carriage operation that would not have benefited from the holding out activities of the common carriage operation.

Finally, in § 119.5(j), the FAA proposes to prohibit certificate holders that operate under parts 121 and 135 from operating in geographical areas unless the operations specifications specifically authorize operations in those areas.

*Section 119.7—Operations specifications.* In § 119.7, the FAA identifies items that must be contained in each certificate holder's operations specifications and restates the existing provision that operations specifications are not part of a certificate.

*Section 119.9—Use of business names.* In this section, the FAA proposes to prohibit certificate holders that operate airplanes under part 121 or 135 from using a business name other than the name appearing in a certificate holder's operations specifications. The FAA proposes that the name of the certificate holder conducting the operation must be displayed on the airplane and clearly visible and readable to a person standing on the ground at any time except during flight time. If the logo or livery of the airplane clearly identifies the certificate holder, no other identification is needed. The purpose of this proposed requirement is for the FAA to be able to identify, primarily for purposes of ramp inspections, those who appear to have operational control of the airplane. Because this regulation would apply to airplane ranging in size from a small reciprocating-engine-powered airplane carrying four persons to a Boeing 747, it is not practical for the FAA to define the size letters that would be required. Any means of identification which satisfies this requirement is acceptable, including signs temporarily affixed in windows or on the door or fuselage of the airplane.

With regard to the issue of whether the logo of the freight forwarder may also appear on the airplane, the FAA believes that the logo of the freight forwarder may remain on the airplane as long as the name of the certificate holder who has operational control is clearly identified.

Because display of the operator's business name may pose unacceptable security risks for U.S. certificate holders who conduct operations in certain foreign countries, the FAA proposes that the Assistant Administrator for Civil Aviation Security may authorize certain certificate holders to conduct operations without complying with the requirement to display, on the airplane, the name of the certificate holder operating it.

Proposed Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

Proposed subpart B sets forth the operating requirements that would apply for specific kinds of operations. The requirements of this subpart must be read in conjunction with the definitions for different kinds of operations found in § 119.3, specifically the definitions for ''scheduled operation,'' ''domestic operation'', ''flag operation,'' ''supplemental operation,'' ''commuter operation,'' ''on-demand operation,'' ''noncommon carriage,'' and ''when common carriage is not involved.'' Significant changes have been made to these definitions. Changes which relate to affected commuters are described earlier in the preamble under ''Changes proposed for part 119 as a result of this NPRM.'' Other changes to definitions in part 119 are explained above under ''Definitions.''

Proposed § 119.21 directs domestic, flag, and supplemental operations to be conducted under the rules in part 121 for those kinds of operations, while commuter and on-demand operations are to be conducted under part 135. Under 119.21(a) the Administrator may permit certain intrastate Alaskan operations to be conducted under some of the flag requirements. Based on a showing of safety in air commerce, the Administrator may permit some operations among the Aleutian Islands and some operations between the Aleutian Islands and the rest of Alaska to be conducted under the applicable rules for flag operations contained in Subpart U of part 121. Also, under § 119.21(a)(3) it is proposed that any certificate holder conducting supplemental operations under part 121 between airports that are also served by the air carrier's domestic or flag operations may be authorized or required to conduct those operations under the domestic or flag rules. In addition, it is proposed that similar existing provisions be retained that certain all-cargo operations that regularly and frequently serve the same two airports may be required to be conducted under domestic or flag rules.

Section 119.23 directs operations when common carriage is not involved using airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, to be conducted under part 125. Noncommon carriage operations conducted with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds, are to be conducted under the rules of part 135 that apply to on-demand operations. ''When common carriage is not involved'' and ''noncommon carriage'' are explained under ''Definitions'' above.

Section 119.25 directs all rotorcraft operations to be conducted under part 135 regardless of the size or seating capacity of the rotorcraft. However, external-load operators and agricultural aircraft operators must comply with part 133 or part 137 of the FAR, respectively.

This NPRM proposes to rescind part 127. Rotorcraft operators that previously operated under part 127 would be directed in Subpart B to conduct those operations under part 135 since those regulations have been more recently updated and, therefore, are more current and provide a more appropriate level of safety.

Proposed Subpart C—Certification Requirements and Operations Specifications

The proposed new part 119, Subpart C, contains the procedural certification requirements and operations specifications requirements for all operations conducted under parts 121 and 135. Many of the requirements in proposed Subpart C were drawn from certification and operations specifications sections in—

(1) Part 121, Subparts A, B, C, and D;
(2) Part 135, Subpart A; and
(3) SFAR 38–2.

The requirements are thus consolidated in proposed Subpart C and invalid references to the CAB and other obsolete references are changed or deleted.

The proposed rules applicable to part 121 operations and part 135 operations have been combined wherever possible. In rare instances, this has necessitated extending part 135 certification requirements to part 121 or vice versa.

Certain additions or revisions to current rules are being proposed which would clarify certification procedures and facilitate FAA processing and inspection functions. The discussion below addresses only important additions or revisions.

*Section 119.33—General requirements.* Proposed § 119.33(c) would require an applicant for a certificate to conduct the proving tests required for certification under the appropriate requirements of part 121 or part 135. The purpose of the tests is to demonstrate (as one of the last steps in the certification process) that the applicant is qualified and eligible to receive a certificate. Currently an

applicant is required to obtain a deviation from part 125 (for airplanes with a passenger-seating configuration of 20 or more or a maximum payload capacity of 6,000 pounds or more) to conduct proving tests under the authority of part 91 and the appropriate requirements of part 121 or part 135. This change would permit applicants to complete the certification process without having to obtain either a deviation or certification to conduct operations under part 125. It is also proposed to amend §§ 121.163, 125.1, and 135.145 to make the proving test requirements consistent in those parts.

*Section 119.35—Certificate application.* Proposed § 119.35 would require a certificate applicant to submit the application 90 days before the intended date of operation rather than 60 days, as presently required. A 90-day submission requirement more realistically reflects the actual time the agency needs to process applications and documentation. As discussed in Advisory Circular (AC) 120–49, there are five phases in the certification process. The applicant begins with a preapplication statement of intent and proceeds through the necessary preparation of documents, and demonstration and inspection of the aircraft. Whether this schedule proceeds on time is, in large part, controlled by the applicant. As stated in the AC, ''Failure to accomplish an item or event in a satisfactory manner or in accordance with the schedule of events could delay the certification.'' The FAA encourages applicants to provide the certification project manager with draft materials during the preapplication period so that problems are not incurred during formal review of the application package. The 90 days, however, refers to the period of formal review of the completed application package. The agency finds that this length of time is necessary for proper review of the application.

The FAA points out that under 49 U.S.C. 44705, the Administrator of the FAA is responsible for ensuring that each air carrier ''properly and adequately is equipped and able to operate safely.'' In order to fulfill this safety responsibility, the FAA must exercise the authority to request any information to make a determination of an air carrier's fitness to operate.

Paragraphs (c) through (h) of § 119.35 are proposed recodifications of §§ 121.47, 121.48, and 121.49. Generally speaking, these sections deal with the disclosure of financial information as well as the disclosure of people and entities that would control the new certificate holder. It should be noted that those three sections and their proposed recodification in § 119.35(c) through (h) only apply to persons who are not air carriers and who are applying for authority to engage in intrastate common carriage but have not undergone a fitness review by the Department of Transportation. The language has been updated to make it consistent with new definitions and certification requirements applicable to these operators. For persons applying for authority to conduct intrastate common carriage operations under part 135 these would be new requirements. The FAA believes these requirements are necessary because financial information, management information, and information concerning who controls the certificate holder can reveal potential shortcomings in the applicant's ability to conduct a safe operation.

*Section 119.41—Amending a certificate.* Proposed § 119.41 contains new procedures for making administrative changes to the operating certificate. These procedures are modeled after the procedures used to amend operations specifications and would standardize the amendment process.

In addition, under § 119.41 applications for amendments to certificates would have to be submitted 15 days in advance of the time the operator wants the amendments to be effective, unless the Administrator approves a shorter period when circumstances warrant (i.e., minor or routine amendments).

*Section 119.45—Use of operations specifications.* Section 119.45 is a recodification of § 121.75.

*Section 119.47—Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.* Proposed § 119.47 requires that a certificate holder maintain a principal base of operations and also allows it to establish a main operations and main maintenance base. ''Principal base of operations'' is defined in § 119.3 as ''the primary operating location of a certificate holder as established by the certificate holder.'' Air carriers with large operations may have other bases located with or separate from the principal base of operations. The FAA proposes to refer to these bases as ''main operations base'' and ''main maintenance base.'' New automated operations specifications would provide for this information. Written notification must be provided to the certificate-holding district office before establishing or relocating a principal base of operations, a main operations base, or a main maintenance base. The principal base of operations, the main operations base, and the main maintenance base may be at the same location. This requirement is derived from § 135.27(a) which requires that a certificate holder maintain a principal business office. The proposed terminology clarifies that the FAA needs to know the location of the primary point of contact between the FAA and the certificate holder. Certificate holders would no longer be required to report changes of address for business offices. Elimination of this requirement does not affect the carrier's responsibility under 49 U.S.C. 46103 to notify the FAA and Office of the Secretary of Transportation (OST) of an address for service of process (see proposed § 119.49(a)(1), (b)(1) and (c)(1)).

*Section 119.49—Contents of operations specifications.* Proposed §§ 119.49(a)(2), (b)(2), and (c)(2) require that each certificate holder obtain operations specifications that list other business names under which the certificate holder may operate. The requirement is proposed to facilitate enforcement and surveillance functions. Current rules under part 135 already require certificate holders to list their alternate business names on their operating certificates. Current part 121 places no restrictions on the use of alternate business names; however, air carriers are prohibited in the economic regulations from using any names that have not been specifically authorized by OST.

The FAA proposes to extend the requirement on alternate business names to part 121 certificate holders to enhance the agency's ability to maintain proper surveillance over these operations and to further prohibit a carrier from using any name not authorized by the Secretary of Transportation. Before deregulation, the number of large carriers operating under part 121 was relatively limited and the activities of these carriers were well defined and stable. Because of economic deregulation, such carriers have proliferated and many conduct operations under one or more trade names. Thus it is necessary for such names to be specifically listed on a carriers operations specifications.

Proposed §§ 119.49 (a)(3), (b)(3), and (c)(3) add a requirement that operations specifications contain a reference to the economic authority issued by OST. The requirement that a carrier have the necessary economic authority is not new. The proposal to include this reference in the operations specifications is intended to clarify that the requirement still exists

notwithstanding the demise of the CAB. The effect of this proposal is to tie the extent of authority contained in a certificate holder's operations specifications to the extent of any required economic authority.

Proposed § 119.49(a)(4) requires a certificate holder conducting domestic, flag, or commuter operations to obtain operations specifications that list each type of aircraft authorized for use and each aircraft's registration markings and serial number. In current § 121.25, for domestic of flag, the registration markings and serial number are not required. The requirement to list registration markings does exist in current § 121.45 for supplemental operations and in all of part 135. The new requirement is proposed in the interest of consistency and to facilitate FAA enforcement and surveillance functions. Any burden of the new requirement would be offset by a proposed provision in §§ 119.49(a)(4)(i), (b)(4)(i), and (c)(6)(i) that would allow certificate holders to submit a current list, which could be a computerized list of aircraft and regular airports and to reference that list on the operations specifications. Current format and procedures for approving operations specifications require that each aircraft be identified on the appropriate form. This current format does not allow use of computer printouts and can lead to excessively lengthy operations specifications.

*Section 119.51—Amending operations specifications.* Under § 119.51 applications for amendments to operations specifications would have to be submitted 15 days in advance for minor or routine amendments; however the FAA proposes to require that certificate holders file applications to amend operations specifications at least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisition or airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations. It has been the FAA's experience that these types of major changes do take at least 90 days for the agency to determine that, as a result of the change, the applicant is properly and adequately equipped and is able to conduct a safe operation.

Proposed § 119.51(e) is basically a recodification of the emergency amendment procedures for operations specifications that already exist in § 121.79. Under § 121.79, if the FAA Flight Standards District Office (FSDO) finds that there is an emergency requiring immediate action, then the amendment becomes effective immediately and any petition for reconsideration to the Director, Flight Standards Service, does not stay the effectiveness of the amendment. Under § 135.17, although the FSDO can issue an amendment that is effective immediately, the filing of a petition for reconsideration stays the effectiveness of the amendment. However, if the Director finds there is an emergency requiring immediate action, then the Director notifies the certificate holder that the amendment is effective upon the date the certificate holder receives the director's finding. In this NPRM, the FAA proposes to adopt—for 121 and 135 operations—the same procedures for emergency amendments to operation specifications. Because safety may require an immediate change to operations specifications for part 135 operations, the FAA has decided to propose a procedure whereby the on-site inspectors make the initial determination that an emergency exists. The proposed procedure change would, like current part 121 procedures, not result in a stay simply because the certificate holder petitioned for a reconsideration of the amendment.

*Section 119.53—Wet leasing of aircraft.* Proposed § 119.53 on wet leasing would be revised from current § 121.6 to do the following: (1) Clarify that the leasing requirements pertain only to wet leasing (which is defined in § 119.3 as a lease of an aircraft that includes the provision of any crewmember); (2) extend the wet leasing requirements to part 135 operations; (3) prohibit a wet lease from a foreign air carrier or any other foreign person; (4) prohibit a wet lease from any person not authorized to engage in common carriage; (5) specify that the Administrator, upon approval of the wet lease, would determine which party to the agreement has operational control and would amend the appropriate operations specifications of both parties, if necessary; and (6) allow a wet lease charter flight to transport passengers who are stranded because of the cancellation of their scheduled flight, provided that the wet lease flight is authorized by OST or the Administrator, as applicable, and that the charter flight is conducted under the rules applicable to a supplemental or on-demand operation. These clarifications reflect for the most part current administrative procedures.

Proposed § 119.53(e) would add a provision to prohibit a certificate holder from conducting any type of flight, not specified in its operations specifications, for another certificate holder. The purpose of this provision is to emphasize that a certificate holder may not contract to perform any flight it is not authorized to perform by its own operations specifications. This means that a certificate holder that agrees to perform scheduled flights for another carrier under a wet lease must conduct those operations under the domestic or flag rules of part 121, or commuter rules of part 135, just as the original carrier would have. To do this it must have operations specifications authorizing it to perform domestic, flag, or commuter rules just as the original certificate holder would have.

For example, airline A conducts domestic operations between New York and Miami. Because of unanticipated problems, it finds it is unable to perform these flights for a period of 3 days. It arranges with airline B to operate these flights under wet lease, in which airline B retains operational control of the conduct of the flights. Airline B must operate these flights under the rules in part 121 applicable to domestic operations, just as airline A would have to do, and airline B must have operations specifications authorizing it to conduct domestic operations.

If the requirement for appropriate operations specifications is not maintained, an operator could conduct ''scheduled'' operations through wet leases with several carriers authorized to conduct only supplemental operations. In addition, an operator might be induced to undertake an overly ambitious schedule of flight operations with the expectation that any required augmentation could be quickly obtained through a wet lease with a carrier authorized to conduct only supplemental operations. Because the frequency and regularity of a scheduled operation require different infrastructure, contractual arrangements with operators flying under the supplemental or on-demand rules cannot be tolerated.

In addition, § 119.53(e) requires that these substitute operations be conducted at ground locations that are: (1) Between airports for which the substitute certificate holder holds authority for scheduled operations or (2) within geographical areas for which the substitute certificate holder has authority for conducting supplemental or on-demand operations.

The FAA recognizes that cases may occur where a certificate holder conducting scheduled operations is

forced to cancel a flight and finds it impractical on extremely short notice to arrange for a substitute carrier with operations specifications that fully meet the proposed requirements. In the rare situation where passengers could be stranded, the FAA and OST have agreed to procedures that would give the passengers the option of taking a charter flight in place of the flight originally scheduled. In such a situation, the operator providing the substitute flight would have to obtain a waiver of 14 CFR part 380 requirements from OST based on an emergency need. See proposed § 119.53(f). The passengers would then be given the option of making their own arrangements, working out arrangements with the original carrier, or taking the charter flight. Each passenger who elects to take the emergency charter flight would be given an appropriate ticket (or other flight document) by the charter operator before the passenger boards the charter flight aircraft. The operator of this charter flight would have operational control and would conduct the flight under the supplemental or on-demand rules, as applicable. Comments are solicited on whether this procedure is adequate to cover any potential hardships.

*Section 119.55—Obtaining deviation authority to perform operations under a U.S. military contract.* This section contains various requirements for an operator who performs military contract services, involving deviations from their normal operations. These requirements include, among others, (1) an application requesting authority to perform the service, (2) certification by the Department of Defense that the service cannot be performed without the deviation, and (3) an appropriate amendment to the certificate holder's operations specifications by the Administrator. Many of these requirements are currently set forth in § 121.57, which applies only to supplemental operations.

In this NPRM, the FAA is proposing a new procedure in order to obtain deviation authority to perform under a U.S. military contract. Under this proposed procedure, the certificate holder must submit its request for deviation authority to the Department of Defense's Air Mobility Command (AMC). AMC would review the requests and forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review. The FAA is making this proposal because during the Desert Shield/Desert Storm operations, the agency was inundated with requests for deviations. The FAA believes that the AMC has the resources to consolidate these requests, identify the specific FARs from which relief is sought, and evaluate the requests to determine whether the relief sought would be needed to accomplish the military mission. The FAA believes that this proposed procedure would enable the agency to process these requests more efficiently, should the need arise in the future.

*Emergency Operations (Sections 119.57 and 119.58).* The FAA is proposing two new sections concerning emergency situations. These two new sections are generally recodifications of §§ 121.57(c), 121.557, 121.559, and 135.19. On the one hand, § 119.57 is designed to address emergency situations in which it is impossible for the certificate holder planning to conduct emergency operations to act without complex and thorough planning. For example, § 119.57 would most often be used to respond to natural disasters such as massive floods and earthquakes. On the other hand, § 119.58 is designed to address an emergency situation in which complex and thorough planning are not possible because of the nature of the emergency. In other words, the nature of the emergency may be such that unless immediate action is taken, all would be lost, and any delayed action would be futile. Readers are reminded that in pure part 91 operations, § 91.3 applies.

*Section 119.59—Conducting tests and inspections.* Proposed language has been included in § 119.59(b)(1) and (e) to emphasize both the authority of FAA inspectors to gain access to a certificate holder's books and records and the fact that a certificate holder risks suspension of part or all of its operations specifications if it fails to provide that access. This language is an important reminder of the FAA's statutory authority and duty to determine whether an operator continues to be properly equipped to comply with the FAR and whether the operator can operate safely. Without access to those records, the FAA cannot fulfill its safety mission. The proposed paragraph makes explicit the intent of present §§ 13.7 and 121.81, Subpart V of part 121, and § 135.63. The purpose of the principal base of operations is for each certificate holder to provide to the FAA one location that the FAA would use as its main point of contact. It is the focus of liaison between representatives of the FAA and the operational management of the certificate holder. The FAA requires notification when this location changes so that it can adjust its staff accordingly. Proposed § 119.59(b)(1) would require that the operations specifications and certificate must be maintained at the principal base; other records must be identified in a current listing at the principal base that shows the location and person responsible for each individual report and record.

*Section 119.63—Recency of operation.* Proposed § 119.63 would prohibit a certificate holder from conducting a kind of operation if that kind of operation has not been conducted for a period of 30 consecutive days. To resume that kind of operation the certificate holder must advise the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and make itself available for any FAA reexamination that the FAA considers necessary. This requirement is being proposed because the FAA believes that the safety requirements for a particular kind of operation might not be met adequately by an operator that does not conduct that kind of operations for that length of time. Safety requires at least 5 days notice so that the FAA has the opportunity to conduct an inspection or reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation. Unless the FAA suspends or revokes the operator's certificate or withdraws the authorization in the operations specification for that kind of operation, the certificate holder may resume that kind of operation on the sixth consecutive calendar day after it notified the FAA of its plans to resume that kind of operation. Even if the FAA decides not to conduct a reinspection or a reexamination during that 5-consecutive-calendar-day period, the certificate holder may nonetheless resume operations on the sixth consecutive calendar day after the notification. For seasonal operators, advance planning and coordination with the certificate holding district office would make resumption of operations smoother.

*Management Requirements Proposed For Part 119 (Proposed Sections 119.65 through 119.71).* Currently the FAA has specific regulations governing qualifications for the management personnel of supplemental air carriers and commercial operators (§§ 121.59–121.61) and air taxi/commercial operators (§§ 135.37—135.39). Part 121 does not have specific regulations governing management personnel of domestic and flag carriers. Under the authority of 49 U.S.C. 44705 and as stated in § 121.27(a)(2) of the FAR, the Administrator must find that ''the applicant is properly and adequately equipped and able to conduct a safe

operation in accordance with this part.'' To fulfill this responsibility, it is necessary to propose standard management personnel qualifications for each certificate holder operating under part 121 of the FAR.

The proposed rule would consolidate management personnel requirements for operations conducted under part 135 or part 121 into new part 119. In proposed §§ 119.65 and 119.67 management personnel requirements would be established for all operations conducted under part 121, including domestic and flag operations, as well as supplemental operations.

The proposed management personnel requirements for operations conducted under part 135 (§§ 119.69 and 119.71) would be substantially the same as those currently in §§ 135.37 and 135.39. The proposed management personnel requirements for operations conducted under part 121 (§§ 119.65 and 119.67) would be similar to those currently in §§ 121.59 and 121.61, which now apply only to supplemental operations.

The only significant changes under the proposed management requirements for part 121 and part 135 would be as follows:

- *Director of safety.* As previously discussed, the FAA is proposing that each certificate holder that conducts operations under part 121 must have a director of safety. This person would be responsible for keeping the highest management officials of the certificate holder fully informed about the safety status of the certificate holder's entire operation. The FAA proposes to eliminate the position of general manager, which is presently required for certificate holders who conduct supplemental operations under part 121.
- *Director of operations.* Current §§ 121.61(a)(1) and 135.39(a)(1)(i) require that a director of operations hold or have held an airline transport pilot (ATP) certificate. Proposed §§ 119.67(a) and 119.71(a) require that a director of operations currently hold an ATP. This change reflects current administrative procedures; an ATP certificate no longer has an expiration date and is revoked only for cause. However, the requirement does not mean that the director of operations must currently meet medical certification requirements.

Current § 121.61(a) requires a director of operations to have at least 3 years of experience as a pilot in command (PIC) of a large airplane or have 3 years experience as a director of operations of an operation using large airplanes or a position of comparable responsibility. In the 1988 NPRM for a new part 119 and again in this NPRM, the FAA proposes for § 119.67(a) to require a director of operations to have both 3 years experience as a PIC of an aircraft under part 121 or part 135 and 3 years supervisory experience in a position that exercised control over any operations conducted with aircraft under part 121 or part 135. This change would assure that a director of operations under part 121 has both the technical and management expertise necessary to direct operations of airplanes used in part 121.

Since 1988, the FAA has decided to propose an additional eligibility requirement for a first-time director of operations and a first-time chief pilot. (There is a later discussion of the eligibility requirements for a chief pilot.) The FAA is proposing that certain experience for the director of operations have been obtained recently. In the case of a person becoming a director of operations for the first time, the FAA is proposing that the PIC experience in large aircraft be recent, i.e., 3 years of experience within the past 6 years. (See § 119.67(a)(3)(i).) Additionally, for all directors of operation under part 121, the minimum of 3 years of supervisory or managerial experience must have been obtained within the last 6 years. (See § 119.67(a)(2).)

Current § 135.39(a)(2) requires that the director of operations for a certificate holder who is not conducting any operation for which a PIC is required to hold an ATP certificate must hold a commercial pilot certificate. Proposed § 119.71(b)(1) would revise the requirement to ''a commercial pilot certificate with an instrument rating'' to ensure that a director of operations has at least minimum experience in instrument flying.

Additionally, for operations conducted under part 135, the FAA proposes that the director of operations have the following experience:

(1) At least 3 years of supervisory or managerial experience within the last 6 years, in a position that exercised operational control over any operations conducted under parts 121 or 135; or

(2) For a person with previous experience as a director of operations, at least 3 years experience as a PIC of aircraft operated under 121 or 135; or for a person becoming a director of operations for the first time, the 3 years of PIC experience must have been obtained within the past 6 years.

- *Director of maintenance.* Current § 121.61(c) requires that a director of maintenance hold a current mechanic certificate with either an airframe or powerplant rating. Current § 135.39(c) requires that a director of maintenance hold a current mechanic certificate with airframe and powerplant ratings. In order to standardize the certificates required for the director of maintenance, proposed § 119.67(c) and 119.71(e) would require that a director of maintenance hold a current mechanic certificate with both airframe and powerplant ratings.

In addition to the foregoing, to serve as director of maintenance for an operation conducted under part 121, a person must have 1 year of experience in a position of returning airplane to service, at least 5 years experience within the past 5 years in one or a combination of the following: maintaining airplanes in the same category and class as the certificate holder uses or repairing airplanes in a certificated airplane repair station that maintains airplanes in the same category and class as the certificate holder uses.

Also, the requirement in present § 135.39(c) that the required experience in maintaining large aircraft must include the recency requirements of § 65.83 has been added to proposed § 119.67(c) and carried over to proposed § 119.71(e).

- *Chief pilot.* Current § 135.39(b)(1) requires that a chief pilot who conducts any operation for which the PIC is required to hold an airline transport pilot certificate must ''hold a current airline transport pilot certificate with appropriate ratings for at least one of the types of aircraft used.'' Similarly current paragraph (b)(2) requires that a chief pilot of a certificate holder who is not conducting any operation for which the PIC is required to hold an airline transport pilot certificate must ''hold a current commercial pilot certificate with an instrument rating.'' Proposed § 119.71(c)(1) and (d)(1) omits the word ''current'' because these pilot certificates no longer have an expiration date and are revoked only for cause. The words ''and be qualified to serve as PIC in at least one type of aircraft used in the certificate holder's operation'' are added to clarify that the chief pilot must meet recency of experience requirements and medical requirements. Readers should note that, in order to be a chief pilot for an operator that conducts part 135 operations, that person must be qualified to serve as PIC in operations conducted under that part. The FAA feels that this proposed requirement is necessary for chief pilots under part 135, but not required for chief pilots under part 121 because part 121 requires operational control systems (e.g., dispatch system, flight following system) that are more robust than the operational control systems required

under part 135. In fact, part 135 does not require a dispatch system or a flight following system; as a minimum, it only requires a flight locating system.

To be eligible to be a chief pilot in part 121 operations, or part 135 operations in which any operation requires that the PIC hold an ATP certificate, a person must hold an ATP certificate. A commercial pilot certificate, with appropriate ratings, is sufficient for a chief pilot at a part 135 operation that only conducts operations for which the PIC's are required to hold a commercial pilot certificate.

In addition to holding the appropriate certificate, in order to be eligible to be a chief pilot in part 121 or 135 operations, a person must have at least 3 years experience as a PIC of aircraft operated under parts 121 or 135. However, if that person is becoming a chief pilot for the first time, the 3 years experience must have been obtained within the previous 6 years.

- *Chief inspector.* Section 121.61 requires a chief inspector for each supplemental or commercial operator conducting part 121 operations. This proposal would standardize this requirement for all operators under part 121. In addition to the existing eligibility requirements, the chief inspector would be required to have at least 1 year of experience in a supervisory position maintaining large aircraft. See 119.67(d).
- *Deviation authority.* The deviation authority contained in §§ 121.61(b)(2) and 135.39(d) has been combined and made applicable to all management personnel. Sections 119.67(e) and 119.71(f) authorize the Manager of the Flight Standards Division in the region of the certificate holding district office to authorize a certificate holder to employ a person who does not meet the qualifications in proposed §§ 119.67 or 119.71. For a certificate holder or applicant that wants to employ a person who does not hold the required airman certificate (e.g., ATP certificate, commercial pilot certificate, airframe and powerplant certificate), the deviation authority sections would not cover such a lack of airman certification situation. The deviation authority provides a means for competent and qualified personnel who do not meet the management personnel qualifications to be employed in required positions.

Revisions to Parts 121 and 135

As discussed earlier, SFAR 38 and SFAR 38–2 were intended as temporary measures that superseded certain provisions in the FAR. Thus, both special regulations began with the statement ''Contrary provisions of parts 121, 123, 127, and 135 of the Federal Aviation Regulations notwithstanding* * *.'' This statement served to inform operators that requirements in the regulations that were contrary to the requirements in the SFAR were superseded by the SFAR. The purpose of the proposed revisions to part 121 Subparts A, B, C, and D, and part 135, Subpart A, is to delete all sections which have been moved to part 119 and to eliminate all references contradictory to part 119, such as requirements using outdated terminology. Subparts B, C, and D and certain sections of Subpart A of part 121 are entirely deleted as well as certain sections of Subpart A of part 135 because these requirements are either obsolete or have been moved to proposed part 119. The FAA anticipates that a derivation table, showing the origin and current source of many of the proposed new sections, will appear in a final rule document. Also, a description of some of these revisions occurs in the ''Editorial Changes'' and the section-by-section portions of this preamble.

Rescinding Part 127 and Related Rotorcraft Regulations

SFAR 38–2 required rotorcraft operations that were formerly conducted under part 121 or part 127 to be conducted under part 135. Part 127 and rotorcraft sections of part 121 have been in effect for 20 years without substantive change despite significant changes in equipment and technology during the period. The rotorcraft requirements under part 121 and all of part 127 would have needed complete revision and updating to be applicable to today's technology. In contrast, part 135 has been updated in recent years. Since most rotorcraft have less than a 30-passenger seating capacity and a payload capacity of less than 7,500 pounds, the FAA decided in the interests of efficiency and safety that rotorcraft operations should comply with the requirements of part 135. In accordance with SFAR 38–2, part 135 requirements superseded part 127 and §§ 121.13 and 121.157. In effect this notice formally proposes a rescission of part 127 and related part 121 sections which were suspended by SFAR 38–2.

The FAA stated in its preamble to the proposed SFAR 38–2 and reiterates in this proposal that, if the air transportation industry significantly expands the use of rotorcraft with more than 30 passenger seats or more than 7,500 pounds payload capacity, appropriate rules would be developed to clearly specify the operating requirements for this class of rotorcraft. However, in the interim, if an operator requests authority to operate this class of large rotorcraft where safety requirements in addition to those prescribed in part 135 are warranted, special operations specifications would be issued, appropriate to the aircraft size and kind of operation.

Editorial Changes

The proposed new part 119 and revisions to parts 121 and 135 would require certain editorial changes. These changes have been made for clarity and consistency and to facilitate combining the requirements of parts 121 and 135. None of these changes would impose any additional requirements on persons affected by the regulations.

The following are examples of changes that would be incorporated in proposed part 119 and made to all of the sections remaining in part 121, Subpart A, and part 135, Subpart A, as well as to other parts of the FAR in order to make them consistent with each other and to reflect current FAA administrative procedures:

(1) References to ''domestic, flag, supplemental, or commuter air carriers'' have been changed to ''domestic, flag, supplemental, or commuter operation,'' as appropriate.

(2) References to ''Domestic, Flag, or Supplemental Air Carrier Operating Certificates'' have been changed to ''Air Carrier Certificates.''

(3) References to ''ATCO Operating Certificates'' have been changed to ''Air Carrier Certificate'' or ''Operating Certificate.''

(4) References to ''Flight Standards District Office'' and ''District Office'' have been changed to ''certificate-holding district office,'' and a definition for ''certificate-holding district office'' has been added.

(5) Obsolete references and compliance dates have been deleted to reflect current FAA procedures and the current FAR.

(6) Language changes have been made for consistency and to facilitate computer searches for certain terms; for example, ''principal operations base'' is changed to ''principal base of operations.''

(7) An effort has been made to break unwieldy paragraphs into more manageable divisions.

In the final rule for this proposal, the FAA will make similar editorial changes in the remaining subparts of parts 121 and 135 and in any other parts affected.

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal

agency shall propose or adopt a regulation only upon area benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this Notice of Proposed Rulemaking (NPRM) would generate benefits that justify its costs and is ''a significant regulatory action'' as defined in the Executive Order. The FAA estimates, however, that the NPRM would have a significant economic impact on a substantial number of small entities. No part of the proposed rule is expected to constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

Costs

The total cost of compliance of the proposed rule is estimated to be $275 million (or $199 million, discounted at 7 percent), over the next 10 years, in 1994 dollars.

The FAA examined each section of part 121 to determine the potential costs of compliance for existing part 135 commuter operators with airplanes of 10 or more passenger seats. First, all of the sections in part 121 were divided into five areas: (1) Operations, (2) Cabin safety, (3) Certification, (4) Maintenance, and (5) Part 119. Next, multidisciplinary teams of FAA personnel evaluated each of the five areas to determine which sections would impose additional costs and which would not. The following represents the results of that evaluation.

A. *Sections without cost impacts.* Those part 121 sections that the FAA has determined would not impose additional costs on part 135 commuter operators are not described in this summary evaluation. Each of those part 121 sections would not impose costs for one of the following reasons: (1) Current practice is identical or very similar to the new requirement; (2) the new requirement represents minor procedural changes; (3) the section determines general applicability and does not specifically impose any costs; or (4) certain requirements of part 135 would be incorporated into part 121 without change. Those part 121 sections without costs are described in the full evaluation under each of the areas for which they apply. While not shown in this summary evaluation, it is important to note that 10 of the sections in the proposed rule were identified as having negligible costs. These negligible costs, even when combined, would not be significant.

B. *Sections with potential cost impacts.* The proposed rule would impose costs on part 135 operators with 10-to-30-seat airplanes. The FAA estimates the total cost of the proposed rule would be $275 million over the next 10 years, with a present value of $199 million. The potential costs are as follows:

| Area | 10–19 seats | 20–30 seats | Total cost | Present value |
|---|---|---|---|---|
| Operations | $141.8 | $58.5 | $200.3 | $141.2 |
| Maintenance | 0.1 | 0.0 | 0.1 | 0.1 |
| Cabin Safety | 11.7 | 8.8 | 20.5 | 15.2 |
| Part 119 | 1.6 | 0.4 | 2.0 | 1.7 |
| Certification | 51.4 | 0.7 | 52.1 | 41.0 |
| Total | 206.6 | 68.4 | 275.0 | 199.2 |

Based on the $207 million figure shown above, the FAA estimates that, on average over the next 10 years, the price of a one-way airline ticket would increase by 1.7 percent or by $1.91 (from $110 to $112) for affected operators with 10-to-19-seat airplanes. Similarly, based on the $68 million figure, the ticket price would increase by 0.6 percent or by $0.68 (from $110 to $111) for affected operators with 20-to-30-seat airplanes.

In addition to the information shown in the table above, it is important to note that the undiscounted cost per airplane in each of the first four years of the proposed rule, by seat category, sheds light on the initial compliance costs incurred by the impacted operators. Costs are highest during the first year (1996) and drop each year thereafter. In 1996, affected operators with 10-to-19-seat and 20-to-30-seat airplanes would incur per airplane costs of $50,000 and $26,000, respectively. Similarly, in 1997, there would be costs of $23,000 and $16,000, respectively. In 1998, there would be costs of $23,000 and $15,000, respectively. And in 1999, there would be costs of $24,000 and $14,000, respectively.

1. Operations. *Section 121.135—Contents of manual.* This section would require the affected operators to have more extensive operations manuals than are currently required under part 135. Part 121 requires more detailed instructions to flight and ground personnel, including dispatch procedures, airport information, and approach procedures. The manuals of part 121 operators are, on average, about three times as voluminous as those of part 135 operators. Thus, compliance with this effort would result in major rewriting of manuals. Based on cost information received from industry, the FAA estimates that, on average, each commuter operator that would come into part 121 would spend about $50,000 for new manuals. This cost estimate multiplied times the number of operators expected to be in existence over the next 10 years amounts to an estimated $3.9 million ($3.5 million, discounted).

*Section 121.337—Protective breathing equipment (PBE) for the Cockpit.* This section requires PBE units for cockpit crewmembers operating transport category airplanes. Part 135 has no such requirement. This evaluation assumes that three PBE units (one for each pilot station and another for fighting fires) would be installed in existing and future impacted airplanes with 10 to 19 seats. There is very little information available related to the number of PBE units on these types of airplanes. As a result of this uncertainty, the FAA solicits comments from the public and the aviation community on the number of part 135 airplanes, with 10 to 19 passenger seats, that are equipped with PBEs in the cockpit and whether the units are fixed or portable. Based on information received from FAA technical personnel, affected airplanes with 20–30 passenger seats already have fixed PBE at each of the two pilot stations in the cockpit. Therefore, only one additional portable PBE would be needed for fighting fires in the cockpit of such airplanes.

Since portable PBEs are much cheaper (and more practical in many situations) than fixed PBEs, commuters are

assumed to acquire and install portable PBEs in the cockpit, especially those impacted airplanes with 10 to 19 passenger seats. In addition to PBE, this evaluation includes costs for weight penalty (5 pounds per unit) and PBE training for new pilots. The estimated cost of each PBE unit ($400), combined with the other cost components, multiplied times the number of airplanes in existence over the next 10 years results in $4.3 million ($3.7 million, discounted).

*Section 121.357—Airborne weather radar.* This section would require the affected operators to equip their airplanes with approved weather radar. Currently, § 135.173 requires that operators equip their airplanes with either thunderstorm detection equipment or approved weather radar. However, section 135.175 requires operators with 20–30 passenger seats to equip their airplanes with weather radar. Based on information received from industry, an estimated 90 percent of all commuter airplanes with 10 to 19 passenger seats are assumed to already have approved weather radar equipment. Therefore, the FAA assumes that this section would only impact an estimated 10 percent of those operators with 10-to-19-seat airplanes in 1996 and subsequent years.

This evaluation assumes an average cost of $30,000 per radar unit and a weight penalty of about 25 pounds per airplane. The sum of these cost components multiplied times the number of commuter airplanes expected to be in existence over the next 10 years amounts to an estimated cost of $3 million ($2.7 million, discounted).

*Section 121.471—Flight time limitations and rest requirements (All flight crewmembers).* This section would require affected operators to comply with part 121 flight time limitations and rest requirements for all flight crew members. Under this proposal, current flight time limitations and rest requirements for commuters would change as follows: from 1,200 to 1000 hours per calendar year, from 120 to 100 hours per calendar month, and from 34 to 30 hours in any seven consecutive days. Although this section pertains mainly to pilots, operators are assumed to apply the same procedures for the respective number of flight attendants. Under a recently published rule on flight and duty time for flight attendants, the FAA gave operators an option to adjust the rest and duty requirements of flight attendants based on those for pilots. This evaluation also assumes that they would adopt that option since it is cheaper to do so for some current part 121 operators.

According to industry representatives, most affected operators are already using rest and duty flight limitations that would be required by this section. On average, pilots of affected operators fly fewer evaluation assumes that 75 percent of affected operators already meet this requirement and that the other operators would have to increase their flight crews by 20 percent. The FAA estimates that an average of 559 additional pilots and flight attendants would be hired and retained between 1996 and 2005. This evaluation also estimates a weighted average annual salary for these entry level new hires to be $19,200 (including fringe benefits). Based on these cost components, the potential cost of compliance would be an estimated $107 million ($75 million, discounted).

*Sections 121.593–595: Dispatching authority for domestic and flag air carriers; 121.107: Dispatch centers; 121.533–535: Responsibility for operational control; 121.683: Crewmember and dispatcher record; 121.687: Dispatch release; and other sections that assign specific duties to dispatchers.* These sections would require dispatchers and dispatch centers to authorize flights for affected operators with 10 to 30 passenger seats. Dispatchers are not required under part 135. The evaluation assumes that operators currently certificated only under part 135 do not employ fully qualified dispatchers; it further assumes that operators certificated under both parts 121 and 135 employ about one half as many qualified dispatchers as they would need to dispatch all of their flights. According to the Airline Dispatcher Federation, virtually all part 135 operators already have facilities and communications equipment that satisfy the dispatch requirements under part 121. Accordingly, the FAA has not included estimates of additional costs attributable to facilities and equipment. The FAA estimates that the dispatcher requirement would cost an estimated $83 million ($57 million, discounted) over the next 10 years. Operators of 10-to-19-seat airplanes would bear approximately $58 million of the costs ($40 million, discounted).

2. Cabin Safety. *Sections 121.133, 121.135, and 121.137—Flight attendant manual.* These sections would require all flight attendants to have an operations manual. There is no such requirement for flight attendants working for part 135 operators. This requirement would necessitate preparing such manuals for each 20–30 seat airplane (airplanes with 10 to 19 passenger seats are assumed not to have flight attendants). The costs would involve the preparation of the manual contents by a flight attendant supervisor and a paperwork and layout specialist and the copying and binding of the finished manual. FAA analysis projects 352 airplanes operated by 21 air carriers in 1996 and 580 airplanes operated by 36 air carriers in 2005. Each airplane has one flight attendant, so the number of manuals is estimated to equal the projected number of airplanes. The 10-year cost for the preparation, copying, and binding of these manuals would be $394,100 ($330,900, discounted).

*Sections 121.285 and 121.589—Carry-On baggage.* These sections would require those part 135 commuter operators coming into part 121 to develop a program to visually screen and stow carry-on baggage. Part 121 requires that a crewmember verify that all baggage is properly secured before all doors are closed and the airplane leaves the gate. The cost of this requirement would involve the preparation of an addendum to the Operations Specifications in which each carrier would outline procedures for screening baggage. Each carrier would bear the cost of developing the addendum for the airplanes in their fleet. The number of air carriers is projected to rise from 69 in 1996 to 77 in 2005. For each air carrier, developing the addendum would involve two people, a flight attendant supervisor for 20–30 seat airplanes and a crewmember supervisor for 10-to-19-seat airplanes (both paid at $24.00/hr) and a clerical person to do the paperwork (an average of 8 hours each). The 10-year cost for operators of 10-to-30-seat airplanes is estimated to be $161,100 ($147,900, discounted).

*Section 121.291—Ditching demonstration.* This section would require air carriers to conduct a ditching evacuation demonstration for new airplanes prior to normal operations. The one-time demonstration only applies when an operator introduces a new airplane make and model currently not in its fleet. This requirement would not apply to the current fleet. Because there are no data available on the extent to which operators would acquire new makes and models in the future, the FAA has made some assumptions. The analysis assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended overwater flights. Hence, the evaluation probably overstates the number of ditching demonstrations needed. As a result of this uncertainty, the FAA solicits comments from the aviation community on the number of new airplane makes and models that air carriers plan to acquire between 1996 and 2005.

The evaluation assumes that over 10 years, 89 tests would be conducted, at an average cost of $400 per test. The cost elements of the demonstration include crewmember compensation (based on 5 hours) and repacking the life rafts (8 hours of labor by maintenance personnel). Air carriers only compensate crewmembers for emergency training at 3.5 hours paid out of 8 hours of training, as it is not considered flight time. The wage rates for the training hours were multiplied times 0.4375. Based on crew compositions, two pilots would need to be compensated for 10-to-19-seat airplanes, and two pilots and a flight attendant would need to be compensated for 20-to-30-seat airplanes. The FAA estimates that the 10-year cost for part 135 operators to conduct ditching evacuation demonstrations for new 10-to-30-seat airplanes would be $35,600 ($25,300, discounted).

*Section 121.309—Medical kits.* This section would require one medical kit per airplane for affected operators moving into part 121. The costs of providing medical kits include acquisition ($200 each) with a 25 percent spares ratio, replacement (5 percent per year), maintenance ($20 per year), a weight penalty (7 pounds per unit), physician consultation expenses ($500 per consultation twice a year per air carrier to obtain certain contents, such as prescription drugs, for the medical kits), and record keeping (1 hour per instance a kit is used). Acquisition, replacement, and maintenance costs are a function of the number of airplanes, while physician costs are incurred by individual operators. The FAA estimates that the 10-year cost for providing medical kits on the 20–30 seat airplanes now operating under part 135 would be $783,900 ($552,800, discounted).

*Section 121.309—First aid kit.* This section would require airplanes to have at least one first aid kit. Currently, part 135 requires all airplanes with greater than 19 seats to have one kit. This section would require a first aid kit on all 10-to-19-seat airplanes. The costs are composed of acquisition ($70 per kit) with a 25 percent spares ratio, a 5 percent replacement rate, and annual maintenance ($7 per kit). Costs are a function of the 10-to-19-seat airplane count, which is projected to be 822 in 1996 and 730 in 2005. The 10-year cost of this requirement would be $157,400 ($126,100, discounted).

*Section 121.309—Halon fire extinguishers or equivalent.* This section would require all affected airplanes to replace existing fire extinguishers (two per 10-to-30-seat airplane—one in the cabin and one in the cockpit) with halon fire extinguishers or the equivalent. This evaluation assumes that no part 135 airplanes are currently equipped with halon fire extinguishers. It also assumes that, since part 135 airplanes were already equipped with fire extinguishers, there would be no additional maintenance costs or weight penalties for this equipment. Based on an industry survey, a 5-pound halon fire extinguisher costs about $100. The cost of this section would involve purchasing the requisite number of halon fire extinguishers per airplane in 1996 with a 10 percent spares ratio. With a five percent recharge rate per year after 1996, the FAA has estimated that the 10-year cost of this requirement is $413,200 ($348,300, discounted). The highest annual cost occurs in 1996 when the 10-to-30-seat airplanes are initially equipped.

*Section 121.313—Cockpit key.* This section would require all crewmembers to have access to a key for the cockpit door. This requirement would apply only to 20-to-30-seat airplanes because airplanes with 10 to 19 seats are not required to have locking cockpit doors. The cost of this requirement would involve copying one key for each airplane. Due to the low cost of copying a key (about $1 per key), the FAA estimates the cost of compliance for this requirement to be $600 ($500, discounted). The highest annual cost ($300 discounted) would occur in 1996 when all 20-to-30-seat airplanes in the fleet would have their keys made. Cost estimates for subsequent years are based on the projected annual increase in airplanes.

*Section 121.333—Portable oxygen.* This section would require airplanes that are certificated to fly above 25,000 feet to have a portable oxygen unit for each flight attendant. This requirement would apply only to commuter airplanes having more than 19 seats because no 10-to-19-seat airplanes in commuter operations are certificated to fly above 25,000 feet, and none of them have flight attendants. In 1994, 78.2 percent of 20-to-30-seat airplanes were certificated to fly above 25,000 feet, and this evaluation projects this percentage into the future. This cost estimate takes into account oxygen unit acquisition ($400 per unit) with a 25 percent spares ratio, a 5 percent replacement rate per year, annual maintenance ($40 per unit), and a weight penalty (5.5 pounds per unit; assuming one unit per airplane, with spares kept on the ground). The evaluation assumes that 344 oxygen units would be purchased in 1996 and new airplanes would be outfitted in the future. Future year costs are based on the projected annual increase in airplanes. The 10-year cost to equip all 20-to-30-seat airplanes would be $520,200 ($385,500, discounted).

*Sections 121.333, 121.571, 121.573—Passenger information.* These sections establish standards for passenger card information under part 121. Although the passenger card information requirements for part 135 operators are similar, new cards would have to be prepared for 20-to-30-seat airplanes; 10-to-19-seat airplanes already exceed the part 121 standards. Industry experience has shown that each card has a lifetime of approximately 3 years. Assuming a phase-in period of one year, one-third of the cards would normally have been replaced during that period anyway. Hence, the two-thirds of the cards normally not scheduled for replacement would need to be replaced. The new information would also need to be included in any flight attendant manual and in the oral briefing. Preparation costs would involve two people, a flight attendant supervisor and a paperwork layout specialist. This effort would require an average of 2 hours each to prepare the new information card. The FAA assumes that it would cost $1 to print and distribute each information card. The 10-year cost for the preparation of these cards would be $130,100 ($94,200, discounted).

*Section 121.337—Protective breathing equipment (PBE) for the cabin.* This section would require a PBE unit in the passenger section of the airplane cabin. The evaluation examines the costs of placing one PBE on all 20-to-30-seat airplanes currently operating under part 135. PBE units would be required in the cabin area of 10-to-30-seat airplanes; however, the PBE in the 10-to-19-seat airplanes would be used by crew members, and their costs are reflected in the Operations section of this analysis. Costs include acquisition of a portable PBE unit ($400 per unit) with a 25 percent spares ratio, annual maintenance ($40 per unit), a 5 percent replacement rate per year, and a weight penalty (5 pounds per unit). After initial PBE acquisition in 1996, new PBE acquisition costs are the sum of the projected increase in airplanes and the replacement quota. Ten-year costs to supply all 20-to-30-seat airplanes are estimated at $659,100 ($488,900, discounted).

*Section 121.339—Life rafts.* This section would require all airplanes involved in extended overwater flight to have an additional life raft on board. The FAA assumes that only 25 percent of all 10-to-30-seat airplanes conduct extended over water flights. Costs include raft acquisition ($5,000 per raft),

annual maintenance ($500 per year), a 5 percent replacement rate per year, and a weight penalty (85 pounds per raft). The 10-year cost to equip the affected part 135 airplanes with an additional life raft would be $4.4 million ($3.4 million, discounted).

This section would require operators to provide a flotation cushion or life vest for each passenger seat on all airplanes. The FAA assumes that operators of 10-to-19-seat airplanes would not be able to install flotation cushions and would therefore obtain life vests. The FAA also assumes that operators of 20-to-30-seat airplanes would replace existing seat cushions with flotation cushions. Current 10-to-19-seat airplanes average 18.62 seats per airplane and 20-to-30-seat airplanes average 29.9 seats per airplane. This evaluation assumes that these ratios remain constant into the future. The total number of cushions and life vests per year is derived by multiplying the number of seats per airplane times the projected airplane count for the 10–19 seat and 20-to-30-seat airplane categories. The cost of providing flotation cushions and life vests includes acquisition ($50 each) with a 25 percent spares ratio, annual maintenance ($5 each), a 5 percent replacement rate per year, and a weight penalty (2 pounds for the life vests on the 10-to-19-seat airplanes and no weight penalty for the 20-to-30-seat airplanes because the existing seat cushions weigh the same as the flotation cushions). Future year costs are based on the projected annual increase in 10-to-30-seat airplanes. The 10-year cost for providing flotation cushions or life vests on 10-to-30-seat airplanes would be $5.1 million ($3.9 million, discounted).

*Section 121.391—Flight attendant at the gate.* This section would require affected operators to have a flight attendant or other authorized person on the airplane during intermediate stops while passengers are on board. The FAA assumes that these airplanes have and would continue to have the same number of daily intermediate stops (3 per day) as part 121 airplanes. Flight attendant coverage would be provided by personnel who are already compensated, except during airplane delays (3 percent of flights) when those persons are no longer available.

The FAA has determined that individual operators could comply with this requirement by following one of three scenarios. Under the first scenario, operators would require all passengers to deplane during intermediate stops at the gate. There may be a cost in inconvenience to passengers who have to deplane, which in turn may ultimatley reduce the amount that they are willing to pay to fly these routes. The FAA has not attempted to quantify this cost due to the lack of information. Interested persons with quantifiable data on the cost of this inconvenience are invited to submit information to the docket. Under the second scenario, operators would require either a flight attendant or pilot to remain on the airplane. Under the third scenario, operators would allow a trained, authorized person to stand in for the flight attendant or pilot when coverage is needed due to a flight delay. The FAA expects air carriers to choose each of the first two options 40 percent of the time and the third option 20 percent of the time due to the higher costs, which include initial training costs and the costs of keeping such personnel on stand-by at intermediate stops. The air carriers would incur the cost of wage compensation when personnel who are not already compensated stay on board airplanes during delays. The 10-year cost of requiring flight attendants (or other designated personnel) at the gate on 10-to-30-seat airplanes is estimated at $7.5 million ($5.2 million, discounted).

*Section 121.417—Protective breathing equipment training.* This section would require part 135 flight attendants to be trained in PBE usage by fighting an actual fire. Specifically, this proposed rule change would require all current and future flight attendants on 20-to-30-seat airplanes to receive one-time PBE training fighting an actual fire during the first year (1996). The FAA estimates training costs (including wages, transportation, and equipment) to be $135.50 for each flight attendant per session. Total instruction costs, which include $125 per session per instructor, were calculated by assuming 20 flight attendants per class (900 flight attendants in 1996). Maintenance labor ($28 per session) is needed to clean up after training. The 10-year cost for part 135 flight attendants to receive PBE training would be $323,500 ($250,500, discounted).

3. Certification. *Section 121.161(a)—Airplane limitations: Type of route.* This section would require that an adequate airport be within one hour flying time at single engine cruising speed along all points of the designated flight route. There is no similar requirement in part 135. This requirement would not affect current part 135 operators in the 48 states, but it could affect 6 of the 12 part 135 operators in Alaska. The FAA estimates that about 150 flights would be affected annually, with reroutings adding about one-half hour to each flight. Applying an hourly variable operating cost of $500, the FAA estimates that annual operating costs would increase by about $37,500. Over the 10-year period, this section would cost an estimated $375,000 ($263,000, discounted).

*Sections 121.177—Takeoff limitations.* Section 121.177(a)(1) would require that an airplane be able to stop safely on the runway, as shown by the accelerate stop distance data, at any time during takeoff until reaching critical-engine failure speed. While this requirement would have minimal effect on operators, manufacturers would be required to calculate accelerate-stop distances for recertification. The FAA estimates that recertification would cost about $5,000 per airplane type for each of the 13 existing commuter category type certificated airplanes, for a first year cost of about $65,000. There would be no ascribable costs for future type certificate airplanes because accelerate-stop distances would be demonstrated during the normal certification process. Over the 10-year period, this section would cost an estimated $65,000 ($61,000, discounted).

*Section 121.305—Flight and navigational equipment.* Section 121.305(j) would require a third attitude indicator. This device is not required on part 23 certificated airplanes, although at least one model (Beech 1900–D) has it as standard equipment. The FAA proposes a one-year retrofit period. The FAA estimates that it would cost about $50,000 for a manufacturer to design, test, and document the results for FAA acceptance. The FAA also estimates that it would cost $16,000 per airplane to retrofit this device, which would add about 5 pounds of weight. For newly manufactured airplanes, installation would cost about $8,000. The annual maintenance, inspection, and repair costs would be about 10 percent of the installation costs on a new airplane. After adjusting for the number of existing commuter category airplanes that have this equipment, the FAA estimates that first-year retrofitting would cost about $12.8 million. The annual weight penalty would be between $9,000 and $10,000. The annual compliance cost for newly manufactured airplanes would be between $160,000 and $200,000. The annual maintenance cost would be between $450,000 and $600,000. Total costs over 10 years would amount to about $19.2 million ($18.4 million, discounted).

*Section 121.308—Lavatory fire protection.* Section 121.308(a) would require each lavatory to have a smoke detector system connected to a warning light in the flight deck and to a warning

light or aural warning that can be detected by a flight attendant in the passenger cabin. Section 121.308(b) would require each lavatory to have a built-in automatic fire extinguisher in each disposal receptacle. These requirements are also contained in section 25.854 for airplanes type certificated after 1991. There are no such requirements in part 135 or part 23. The FAA proposes to apply these requirements to airplanes with 20 or more seats currently operating under part 135. The cabin warning signal would not be applied to airplanes with 19 or fewer seats because they have no flight attendant.

The FAA estimates that about half of the 272 airplanes used in part 135 operations and certificated before 1991 as part 25 airplanes do not have these fire warning and fire extinguishing devices. However, nearly all recently manufactured airplanes do have them. Consequently, the FAA assumes that all newly manufactured airplanes would have these devices even in the absence of a regulatory requirement. Thus, there would be no incremental compliance cost for newly manufactured airplanes.

The FAA estimates that it would cost about $175 to retrofit a warning signal that would add about 5 pounds of weight and involve about $50 a year in maintenance and about $15 a year for replacement. The FAA estimates that it would cost about $300 to retrofit receptacle automatic fire extinguishers that would add about 5 pounds of weight, cost about $50 per year in maintenance, and cost about $25 per year for replacement. Based on these assumptions, the retrofitting costs would be about $23,800 for fire detectors and about $40,800 for receptacle fire extinguishers. The annual weight penalty for both devices would be about $4,000. The annual maintenance and replacement costs would be about $20,000. The total costs over 10 years would be about $263,000 ($206,000, discounted).

*Sections 121.310 (b), (c), (d), (e), and (h)—Cabin emergency lighting equipment.* These sections are analyzed together because they comprise an integrated system. Section 121.310(b) requires interior emergency exit markings (1) above the aisle near each emergency exit or at another ceiling location if the aisle height is too low and (2) next to each emergency exit. Section 121.310(c) requires an emergency lighting system that is independent of the main lighting system's power supply and that illuminates each exit sign and the floor proximity emergency escape path marking. Section 121.310(d) requires that these emergency lights (1) be automatically activated in a crash landing or whenever the airplane's normal electric power is interrupted and (2) have the capability to be manually operated from the flight deck and from a point in the cabin readily accessible to the flight attendant's seat. Section 121.310(e) requires luminescent emergency exit operating handles for airplanes certificated after May 1, 1972, and allows painted emergency exit operating handles in airplanes certificated prior to that date. Section 121.310(h) requires airplanes to have the independently powered exterior emergency exit lighting specified in section 25.812 (f) and (g) to illuminate both the area where the first step out of the exit would be taken as well as the area (for an overwing exit) where the first step off the wing would be taken.

There are no parallel requirements in part 135, although an airplane type certificated under part 23 must have a self-illuminating exit or an independently electrically illuminated sign under section 23.811(b). Commuter category airplanes do not have these signs, markings, the associated independent electrical system, and exterior lighting. The FAA proposes a 2-year retrofit period. The emergency lighting would meet the requirements of section 121.310(e) for an illuminating emergency exit handle.

The FAA estimates that this total retrofit electrical package would cost about $2,500 for a commuter category airplane and would add about 20 pounds of weight. The FAA also assumes that the annual maintenance and replacement costs would be about 10 percent of the retrofitting cost. For newly manufactured airplanes, the installation cost would be about $2,000. On this basis, the retrofitting cost would be about $1 million per year for the first 2 years. The weight penalty cost would be about $22,500 in the first year and about $45,000 in each year thereafter. The annual maintenance cost would be between $200,000 and $250,000. Since newly manufactured airplanes would largely replace existing airplanes, these weight penalty, maintenance, and replacement costs are included in the retrofitting costs above. The total costs over 10 years would be about $3.6 million ($2.5 million, discounted).

*Section 121.310(g)—Exterior exit marking.* Section 121.310(g) would require each emergency exit and the means of opening that exit from the outside to be marked (painted) on the outside of the airplane. The exit must be marked by a 2 inch colored band. There are no similar requirements in part 135 but airplanes certificated under part 23 must have a marking that is readily identifiable under § 23.811(a). The FAA estimates that about 90 percent of airplanes in part 135 operation have markings that would comply with section 121.310(g). For the remaining 10 percent that would need marking changes, this requirement would cost about $100 per airplane. On this basis, the FAA estimates that one-time repainting costs would be about $8,000 ($7,400, discounted) in 1996.

*Section 121.311(g)—Shoulder Harnesses.* This section requires flight attendant seats to have shoulder harnesses. There is no similar requirement in part 135. This requirement would only affect airplanes with 20–30 seats because airplanes with fewer seats do not have flight attendants. The FAA proposes to require that harnesses be installed within one year. The FAA believes that a retrofit and an installation on a new airplane would cost about the same—about $300 for the harness and about four hours for the installation (at about $20 per hour). The harnesses would have a 20-year life span and would involve about $15 in annual maintenance and inspection. On that basis, the first year compliance cost would be about $135,000, and the annual compliance cost for new airplanes would be between $15,000 and $19,000. The total costs over 10 years would be about $284,000 ($228,000, discounted).

*Section 121.312(b)—Passenger Seat Cushion Fire Blocking Materials.* This section would require that passenger seat cushions comply with the fire protection standards in section 25.853(b). This section would require that existing seat cushions in commuter category airplanes be replaced by fire resistant cushions. The proposed rule would provide a 2-year retrofit period plus 2 additional years if there are demonstrated difficulties in installing fire resistant seat cushions.

Although different compliance costs could be incurred by different commuter airplane models because the seat construction differs among these models, the FAA estimates that retrofitting a fire blocking seat cushion would cost approximately $20,000 per airplane and would add a total of 38 pounds (2 pounds per seat) of weight. Assuming that an equal number of airplanes would be retrofitted every year for the next 4 years, the FAA estimates that retrofitting seats would cost about $3.8 million in the first year and about $3.4 million in each of the next 3 years. The weight penalty would be about $20,000 in the first year and increase by $20,000 each year for 3 years until reaching an annual total of $80,000.

There would be no incremental inspection, maintenance, or repair costs because, in general, seat cushions are reupholstered rather than replaced, and the reupholstering cost would be independent of the underlying structure of the seat cushion.

For newly manufactured airplanes, there would be no incremental installation costs because it would take the manufacturer the same amount of time to install a seat with a fire blocked cushion as it would to install a seat with a non-fire blocked cushion. Thus, the only incremental cost for fire blocking seat cushions in newly manufactured airplanes would be the cost difference between fire blocked seats and non-fire blocked seats. The FAA estimates that this differential would be about $5,000 per airplane and add about 2 pounds of weight per seat. Therefore, the annual cost for newly manufactured airplanes would be about $150,000. Since these newly manufactured airplanes would largely replace existing airplanes, the weight penalty cost is included in the retrofitting cost estimates. Over the 10-year period, this cost would be about $15.5 million ($12.8 million, discounted).

The FAA, however, believes that these unit costs for both retrofitted and new installations would likely decrease over time, as fire blocked seats become the industry norm rather than an infrequently selected option. As they become more widely used, the large initial engineering, development, and testing costs would be amortized over more seats, and the per seat production costs would similarly decline as the number manufactured increases. Nevertheless, in order not to underestimate the compliance costs, the FAA has not incorporated any prediction concerning potential reductions in future fire blocked seat costs. The FAA requests information and comments on this assumption.

*Section 121.314—Cargo and Baggage Compartments.* Sections 121.314, 25.855, 25.857, 25.858, and part 25 appendix F part III would require fire retardant fiberglass cargo liners, smoke detectors that signal the flight deck, and fire extinguishing systems in Class C and D cargo baggage compartments. There are similar requirements for commuter category airplanes in section 23.853(d)(3). This section would require new production commuter category airplane cargo compartments to meet these part 121 and part 25 requirements within 4 years. Over the 10-year period, the estimated cost of compliance for these three requirements would be $5.5 million ($3.4 million, discounted).

Section 121.314 was amended in 1989 to require fire retardant fiberglass cargo liners in newly manufactured part 25 airplanes, but the requirement to retrofit airplanes in part 121 operation was limited to airplanes with cargo areas greater than 200 cubic feet. The FAA estimates that the initial engineering, development, and testing costs would be about $10,000 per type certificate. Although there would be no incremental labor costs for liner installations in newly manufactured airplanes, the FAA estimates that the incremental materials would cost about $10,000 and would add about 5 pounds of weight. The FAA assumes that there would be no incremental inspection, maintenance, or repair costs. Based on these assumptions, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $300,000 and $350,000. The annual weight penalty would be about $4,000 in the first year, increasing by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes.

With respect to fire detection systems, the FAA estimates that the initial engineering, development, and testing costs would be about $20,000 per type certificate. The FAA also estimates that it would cost about $4,500 per newly manufactured airplane to install this system and that it would add about 5 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be about 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be about $130,000. The weight penalty would be about $4,000 in the first year and increase by $4,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, inspection, maintenance, and repair costs would be about $13,500 in the first year and would increase by $13,500 each year thereafter.

With respect to automatic fire extinguishing systems, the FAA estimates that the initial engineering, development, and testing costs would be about $30,000 per type certificate. The FAA also estimates that it would cost about $9,000 per newly manufactured airplane to incorporate this system and that it would add about 10 pounds of weight. The FAA assumes that inspection, maintenance, and repair costs would be 10 percent of the installation cost. The annual incremental cost for newly manufactured airplanes would be about $430,000. The weight penalty cost would be about $8,000 in the first year and would increase by $8,000 each year thereafter until the commuter category airplane fleet is composed solely of complying airplanes. Similarly, maintenance and repair costs would be about $27,000 in the first year and would increase by $27,000 each year thereafter.

*Section 121.342—Pitot Heat Indication System.* This section would require a pitot heat indication system to indicate to the flight crew whether or not the pitot heating system is operating. Part 23.1323 requires that a pitot heat system for most commuter category airplanes but there are no requirements for a heat indication system. The FAA proposes to require that existing commuter category airplanes have these heat indicating systems within four years. The FAA estimates that it would cost a manufacturer about $10,000 for initial engineering design, testing, and FAA approval. The FAA also estimates that it would cost about $500 to retrofit each airplane. There would be minimal weight penalty, inspection, maintenance, and repair costs. Over the 10-year period, this cost would be $1.2 million ($1 million, discounted).

*Section 25.703—Takeoff Warning System.* This section requires an aural warning at the beginning of the takeoff roll when the wing flaps, leading edge devices, wing spoilers, speed brakes, and longitudinal trim devices are not in a position that would allow a safe takeoff. There is no similar requirement in part 23. However, commuter category airplanes do not have leading edge devices, wing spoilers, or speed brakes. Further, these airplanes have demonstrated the ability to safely continue takeoff under abused trim conditions. As a result, the only additional monitoring would be for the flap settings.

Currently, there is rulemaking on the installation of digital flight data recorders (DFDR) in future airplanes. As DFDRs would monitor flap settings if they are required in future production airplanes, the FAA estimates that the average cost to engineer, develop, test, and install an aural warning would be about $1,000 per airplane. If, however, the DFDRs are not required, the FAA estimates that the average cost to engineer, develop, test, and install an aural takeoff warning device would be about $16,000 per airplane. The annual inspection, maintenance, and repair costs would amount to about 10 percent of the installation costs. The FAA proposes to require these aural warning devices on new production commuter

category airplanes produced four years or more after the final rule effective date. On that basis, if DFDRs are required equipment, the FAA estimates that the annual incremental cost for newly manufactured airplanes, beginning after 4 years, would be between $30,000 and $35,000, with total costs over the 10-year period of about $200,000 ($120,000, discounted). The annual maintenance cost would be between $3,000 and $4,000, increasing by about $3,500 every year thereafter, and totaling $80,500 over 10 years ($45,000, discounted). If DFDRs are not required equipment, then the annual incremental cost for newly-manufactured airplanes, beginning after 4 years, would be between $480,000 and $560,000, with total costs over 10 years of about $3.0 million ($1.8 million, discounted). The annual maintenance cost would be between $48,000 and $56,000, with total costs over 10 years of about $1.1 million ($650,000, discounted). The total compliance costs over 10 years would equal about $4.1 million ($2.5 million, discounted).

*Section 25.807(e)—Ditching Emergency Exits.* This section would require exits that are usable while the airplane is afloat, even if the airplane is not certificated for ditching. Amendment 23–46 to part 23 contains a similar requirement but all current commuter category airplanes were type-certificated before this amendment became effective. However, the overwing exits on nearly all commuter category airplanes already qualify as ditching exits. The provision would require the manufacturer to demonstrate to the FAA that the overwing exits can qualify. The proposed rule would allow manufacturers two years to provide this demonstration. The FAA estimates that such a process would cost about $5,000 for each of the 13 commuter category type certificated airplane models. On this basis, the compliance cost over the first 2 years would be about $65,000 ($59,000, discounted).

4. Maintenance. The FAA estimates that the cost of compliance for maintenance would amount to $105,000 over the next 10 years. Affected operators would incur costs to revise and upgrade their continuous airworthiness maintenance programs (CAMP). This and other cost considerations are discussed below.

*Section 121.361—Applicability.* The proposed rule would require affected operators with airplanes of 10 or more passenger seats to have a part 121 maintenance program. The proposed rule would require all part 135 commuters currently operating under a CAMP to revise and upgrade their program. Since these operators already have a CAMP, the only requirement of the proposed rule would to revise and upgrade their existing program. The FAA estimates the potential cost of this section is $105,000 ($98,000, discounted).

*Other cost considerations.* In addition to those maintenance cost estimates for equipment contained in the cabin safety, operations, and certification areas of this evaluation, the proposed rule may impose additional costs for training maintenance personnel. Compliance with the more complexed equipment requirements of the proposed rule may necessitate additional training of maintenance personnel. Despite surveying several small operators to obtain information on the costs of such training, the FAA needs more data to estimate such costs. The FAA believes that some commuters may incur higher training costs as the result of the proposed rule, though to what extent is uncertain. As the result of this uncertainty, the FAA solicits comments from the aviation community as to what extent the affected commuters would incur additional costs for training maintenance personnel.

5. Part 119. Part 119 is a proposed new part that consolidates the certification and operations specifications requirements for persons who operate under parts 121 and 135. Most of these regulations are currently in SFAR 38–2; therefore, moving them to part 119 would not impose any additional cost. However, some sections currently under parts 121 and 135 would be moved to part 119. The costs imposed by those sections on the affected part 135 operators are presented below. Over 10 years, the costs of these provisions are estimated to be $2.2 million ($1.8 million, discounted).

*Sections 119.33(c), 121.163—Proving tests.* When an operator changes the type of operation it conducts or purchases an airplane that is new to that operator, that operator must go through a proving test. A proving test consists of a non-passenger flight in which the operator proves it is capable of safely conducting that type of operation or airplane. Going from a part 135 operation to part 121 operation would be a change in operation and be subject to a proving test. Under the proposed rule, there would be two costs associated with proving tests—initial and recurring. The initial cost would be proving tests for the existing fleet (existing as of 1996). The recurring costs would be for any future operational or airplane changes that would normally require a proving test as required by the existing rule.

The current regulation prescribes 50 hours of flight for a part 121 (section 121.163(b)(1)) proving test. This is the number that part 135 operators switching to part 121 would be subject to. However, the current rule also allows for deviations from the 50-hour requirement. A sample of FAA records on proving tests shows that, since 1991, there has been a wide range of hours actually flown for proving tests. This is because the amount that the operator is allowed to deviate from the prescribed number of hours is based on what that operator requests and on what the FAA will allow. However, based on the above sample, the FAA assumes for the purposes of this analysis, the average deviation would be 50 percent, or 25 hours.

The FAA estimates that 25 hours of proving flights would cost the operator approximately $13,400 for a 20-to-30-seat airplane and $12,900 for a 10-to-19-seat airplane. The difference in cost is due to the flight attendant being on board in the 20-to-30-seat airplanes. These costs are based on the following assumptions:

Airplane Operation Cost

Hours of test flight time, 25
Airplane operating cost/hr., $370
Pilot salary per hr., $47
Flight attendant per hr., $20

Management Costs

Manager salary per hr., $23
Secretary salary per hr., $10
Maintenance salary per hr., $21
Days of preparing for test, 3

If there is a proving test for each type of airplane for each part 135 carrier affected by the proposed rule, then there would be approximately 98 proving tests to bring the current fleet up to part 121 standards. The cost to the 69 part 135 operators in 1996 for the initial 98 proving tests would be approximately $1.27 million. Of this cost, approximately $281,000 would be incurred by operators with 20-to-30-seat airplanes and $992,000 by operators with 10-to-19-seat airplanes.

The recurring costs would accrue over the next 10 years as a result of the affected operators having to conduct a part 121 proving test instead of a part 135 proving test. If the prescribed number of hours for part 135 and part 121 operators is 25 and 50 respectively, and the average deviation is 50 percent, then the difference in hours would be 13 [(50–25) × .5]. Also, the FAA found from the survey of its records that, on average, operators conduct one proving test every four years, which equates to approximately two tests over the 10-year period.

If the average number of operators over the next 10 years is 75, then the FAA will conduct approximately 15 ((75 operators × 2 tests)/10 years) proving tests annually—12 for 10-to-19-seat airplanes and 3 for 20-to-30-seat airplanes. The FAA estimates that the increased cost of a proving test per part 135 operator would be $6,040 for a 20-to-30-seat airplane and $5,790 for a 10-to-19-seat airplane. For all affected operators, the proposed rule would impose approximately $87,600 annually in additional costs for proving tests. Over the next 10 years, the total recurring cost of this provision would be $876,000 ($616,000, discounted).

*Section 119.67—Directors of maintenance/operations and chief inspector.* The proposed rule would impose costs by expanding the applicability of the part 121 director requirements to include the affected part 135 operators. This proposal would impose costs on commuter operators who would have to require directors of maintenance and operations to meet the part 121 employment experience standards.

The proposed rule also would impose costs by expanding the requirements themselves, thereby potentially affecting all part 121 operators. These costs would occur due to the expanded requirement that directors have both technical and management experience. The existing rule requires one or the other. The part 121 standards at issue are as follows:

—Director of Maintenance—five years (instead of three years for part 135 operators) of maintenance experience and one year of managerial or supervisory experience (in part 135 this is optional);

—Director of Operations—three years experience as a pilot in command (same for part 135) and three years supervisory or managerial experience (in part 135 this is optional).

For commuter operators, these new standards could potentially impose increased personnel costs. Costs would accrue to the extent that operators would have to pay higher wages. The FAA has not identified any existing directors (commuter or air carrier) who would not meet the proposed standards. Thus, the proposed rule would not impose any costs initially.

Costs could accrue in the future as new directors need to be hired since commuter operators may have to pay a higher wage that would commensurate with the new experience level. This assumes that a director candidate with two additional years of maintenance experience or a candidate with three additional years of managerial or supervisory experience, for example, would necessarily command a higher wage than someone who did not have the same years of experience. This higher personnel cost also could affect current part 121 operators who, in the future, may be prohibited from hiring director candidates who only have technical or management experience. Under the proposed rule, they would have to hire a candidate with both, and therefore, potentially pay a higher salary.

The proposed rule would also require current commuter operators to designate a chief inspector. The requirements for the chief inspector are that they have one year of experience in a supervisory position maintaining large aircraft. To the extent that an operator does not have anyone who meets this qualification, and therefore, has to hire an additional person, then the proposed rule would impose costs.

The FAA does not know to what extent commuter operators would have to pay director's wages higher than they otherwise would or hire an additional person for chief inspector. In regard to those potential wages and hirings, the FAA solicits comment from the industry.

*Section 121.159—Single-engine airplane costs.* The proposed rule would prohibit the use of single-engine airplanes in scheduled passenger service under part 121. The FAA has identified 10 single-engine airplanes with 10 seats or more involved in scheduled passenger operations. These airplanes are flown by four commuter operators, all in Alaska. As a result of the proposed rule, these operators would need to either sell these airplanes, change them to all-cargo operations, or remove seats so that there are no more than nine passenger seats. Since most of these planes have 10 passenger seats, the FAA believes that the most probable outcome would be for the operators to remove one passenger seat from scheduled passenger service, and thereby, operate the airplane under part 135.

The FAA assumes that there would be no cost to remove the seats since typically, the tenth passenger seat on these airplanes can also be used as a co-pilot seat since it is located next to the pilot. Thus, operators could avoid the cost of removing the seat by not allowing passengers to sit there. However, potential costs would accrue from the lost revenue that operators would incur from not being able to sell a ticket for that tenth seat.

Costs would accrue to the extent that the reduced capacity (due to the seat removal) would not meet system-wide passenger demand. The FAA used a model that correlates the system-wide load factor to unmet demand (which is the basis to measure revenue loss). From this model, the FAA calculated that an operator would incur lost revenue of $1,535 annually due to the loss of one seat on these airplanes. Total cost of the removal of passenger seats for the 10-year period is $15,350 ($10,781, discounted).

Benefits

The commuter segment of the U.S. airline industry is a vital and growing component of the nation's air carrier system. Commuter aircraft transport passengers between small communities and large hubs, and they play a vital role in transporting passengers over short distances, regardless of airport or community size. In many cases they are a community's only convenient link to the rest of the nation's air transportation system.

Over the past 15 years, the commuter industry has grown considerably. In 1993, for example, enplanements for commuter carriers grew by more than 10 percent, far outpacing the one percent growth of enplanements on larger carriers. Forecasts of commuter industry activity give every indication that growth in this segment of the airline industry will continue to be robust during the next 10 years.

Many commuter carriers operate in partnership with major air carriers, providing transportation to and from hub locations that would be unprofitable with larger aircraft. These partnerships frequently operate within a seamless ticketing environment, in which the major carrier issues a ticket that includes one or more trip segments on a commuter. As these relationships between major carriers and commuter airlines continue to grow, it will become more common for the average long distance flyer to spend some time on a commuter.

The combined effect of a continuing growth in the commuter industry and the ever growing relationship between major carriers and their commuter counterparts will progressively blur the distinction between commuter and major air carriers. In other words, passengers will no longer readily distinguish between one type of carrier and another, but will view each component as simply a part of the nation's air transportation system. Therefore, it is important to establish a common approach toward regulatory safety. Air carrier accidents affect public confidence in air transportation,

perhaps more than accidents in any other mode.

What is the public value or benefit of air transportation? It would be nearly impossible to calculate something that has been so widely accepted in the American lifestyle. One figure that represents the very least value the public places on traveling by air is the annual amount the public spends on air transportation, or in other words, annual air carrier revenues. In 1994, the FAA estimated that amount to be $88 billion. If public confidence wavers by only one percent, annual total air carrier revenues would be reduced by $880 million, which is a minimum dollar estimate of the cost that the public would experience in terms of being denied a fast, safe means of transportation. Some studies have been done to measure the effect of change in public confidence. In 1987, the FAA studied the impact of acts of terrorism on aircraft travel on North Atlantic Routes. Correlations were calculated between the amount of media attention given to a specific act of terrorism and corresponding traffic reductions. The study concluded that there were short-term, carrier-specific correlations between the two. Following a well publicized incident, ridership on the carrier experiencing the incident would drop as much as 50 percent for a few months. In another instance, a major air carrier reported that two catastrophic accidents in 1994 resulted in a half-year revenue loss to that carrier of $150 million. These examples relate to carriers utilizing large aircraft, but point out that public use of air transportation can be affected by the prevailing level of public confidence.

The American public demands a high degree of safety in air travel. This is manifested by the large amount of media attention given to the rare accidents that do occur, by the short term reductions in revenues carriers have experienced following accidents or acts of terrorism, and by the pressure placed on the FAA as the regulator of air safety to further reduce accident rates.

The FAA is confident that the proposed rule would further reduce air carrier accidents. The rule proposes dozens of changes in the way that smaller air carrier airplanes are built, maintained, and operated—all aimed at eliminating or at the very least minimizing the differences between small and large airplanes and the way they operate. Many of these changes result in small, unmeasurable safety improvements when examined in isolation, but taken together result in a measurable difference. That measurable difference ultimately is to bring commuter accident rates down to the very low level of that of the major carriers. That rate is nearing the point of rare, random events.

What follows is a quantified analysis of the potential benefits of the proposed rule based on the assumption that it will bring about further reductions in the commuter accident rate. The analysis finds that measurable potential benefits substantially exceed the cost of the rule, but the FAA believes that the larger but nonquantifiable benefit is public confidence in air transportation.

*Potential Safety Benefits.* The FAA estimates that from 1996 to 2005, the proposed rule has the potential to prevent approximately 94 accidents, providing an estimated benefit of $555 million (or $393 million, discounted). This benefit is based on the assumption that the proposed rule would significantly close the accident-rate gap between airplanes with 10 to 30 seats now operating under part 135 and airplanes with 31 to 60 seats now operating under part 121. FAA is using the smaller part 121 airplanes for comparison because they operate more similarly to 10-to-30-seat airplanes than do the larger part 121 airplanes.

Typically, the FAA estimates aviation safety benefits based on rates of specific types of accidents that the rulemaking would prevent in the future. However, for this rulemaking, the FAA used a more broad-based accident rate. This approach was adopted because the scope of the various components of the proposed rule covers such a wide range and many of those components are interrelated. For instance, additional safety equipment like PBEs could save lives; but PBEs are of little use if the flight crew is too tired to use them in a timely and correct manner. It would be extremely difficult to determine the benefit of PBEs completely separate from flight-time limitations.

To estimate the potential benefits of the proposed rule, the FAA assembled a database of relevant part 121 and part 135 commuter accidents between 1982 and 1993 based on National Transportation Safety Board (NTSB) accident reports. The FAA then divided the annual number of accidents by the annual number of scheduled departures to get the annual accident rate. The FAA took the difference in annual accident rates for 10-to-30-seat, part 135 airplanes and 31-to-60-seat, part 121 airplanes and multiplied them by the projected annual number of scheduled departures for 10-to-30-seat part 135 airplanes. This gives the projected annual number of accidents that the proposed rule could potentially prevent. The FAA estimates that from 1996 to 2005, the number of accidents that potentially could be prevented is 94. Then, multiplying the number of potentially prevented accidents by the average cost of a part 135 accident ($5.9 million) gives the total potential benefits of the proposed rule, $555 million from 1996 to 2005. The present value of this benefit is $393 million.

The extent to which the accident rate gap could be closed by the proposed rule is not certain. This uncertainty is based on the following factors:

—Inherent differences in airplane performance for airplanes with fewer than 30 seats and airplanes with more than 30 seats;

—Inherent differences within the 10-to-30-seat range, which can include single- and multi-engine piston and turboprop airplanes;

—The proposed regulations would still allow some exemptions for airplanes with 10 to 30 seats, especially with respect to certification;

—Not all part 121 requirements would be applied to 10-to-30-seat airplanes with this proposed rule (flight data recorders, cockpit voice recorders, and crew training for instance);

—To the extent that past FAA rulemaking has been effective in preventing accidents over the years, the accident rates used in this analysis already reflect the accidents prevented by past rulemaking. However, to the extent that some recent rules may not be fully implemented, the potential benefits of the proposed rule will be overstated;

—There is a higher proportion of 10-to-30-seat airplanes operating in Alaska, which has a considerably higher accident rate than the rest of the country;

—In some instances, the proposed rule would not prevent a potential accident but rather mitigate it by lessening the severity of the casualties and airplane damage;

—The accident rates reflect the extent to which part 135 operators are already in compliance with the proposed rule. To the extent that differences in part 121 and part 135 operating procedures and airplane standards can be reduced, so too can the difference in their accident rates.

The extent to which the accident rate gap closes will determine how much of the potential $393 million in potential benefits actually accrues. Given the scope of the proposed rule, the FAA anticipates a significant amount of the accident rate gap to close.

Comparison of Costs and Benefits

The proposed rule is expected to generate safety benefits in the amount of

$555 million ($393 million, discounted) from 1996 to 2005. Over the same period, the proposed rule would impose costs of $275 million ($199 million, discounted).

There are two important points that should be noted about the benefits estimate. First, the estimate has not been adjusted to account for accidents that would be prevented by other NPRMs that the FAA has issued. One NPRM in particular, the Air Carrier Training Program, would prevent many of the same accidents that this proposed rule would prevent (the cost of that rule to commuter operators would be $36 million). Second, the FAA is not certain how effective the proposed rule would be in completely closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes.

In spite of these uncertainties, the FAA contends that the proposed rule would be cost-beneficial. This assessment is based on the fact that the combined cost of the Air Carrier Training Program NPRM and this NPRM, totaling $235 million ($199 + $36), is still less than the total potential benefits of this NPRM. Both NPRMs would have to be only 60 percent effective in closing the accident rate gap between 10-to-30-seat airplanes and 31-to-60-seat airplanes for the benefits to exceed the costs.

Initial Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Federal regulations. The RFA requires a Regulatory Flexibility Analysis if a proposed rule would have ''a significant economic impact on a substantial number of small entities.'' FAA Order 2100.14A outlines FAA's procedures and criteria for implementing the RFA. With respect to the proposed rule, a ''small entity'' is a commuter operator (with 10 to 30 seats) that owns, but does not necessarily operate, nine or fewer airplanes. A ''significant economic impact on a small entity'' is defined as an annualized net compliance cost to a small commuter operator which is greater than or equal to $67,000. A ''substantial number of small entities'' is defined as a number that is 11 or more and which is more than one-third of the small commuter operators subject to the proposed rule.

A. *Initial regulatory flexibility determination.* The number of small commuter operators that would be affected by the proposed rule was based on the average forecasted number of operators owning 10-to-30-seat airplanes for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA estimates that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also calculates that these 75 operators would own 1,267 airplanes with 10 to 30 seats, of which the 24 small commuter operators would own 108 airplanes. In addition, the FAA estimates that 23 of the 24 small commuter operators would own 105 airplanes with 10 to 19 seats and 2 of the 24 small commuter operators would own 3 airplanes with 20 to 30 seats (this means that one operator owns both 10-to-19-seat airplanes and 20-to-30-seat airplanes.)

The discounted cost of the proposed rule over the 10-year period would be $199 million or about $28 million annualized at 7 percent, of which 1) those operators owning 10 to 19 seat airplanes would account for about $150 million or $21 million annualized and 2) those operators owning 20 to 30 seat airplanes would account for $48 million or $7 million annualized. The 24 small commuter operators would account for $20 million (discounted) or $2.9 million annualized, of which the 23 small commuter operators owning 10-to-19-seat airplanes would account for about $19.9 million (discounted) or about $2.8 million annualized and the 2 small commuter operators owning 20-to-30-seat airplanes would account for about $305,000 (discounted) or about $43,000 annualized. The annualized cost per airplane would be about $27,000 for 10-to-19-seat airplanes and would be about $14,500 for 20-to-30-seat airplanes.

In analyzing the major sections of this proposed rule the FAA estimates that: operations would account for $141 million (discounted) or $20 million annualized; maintenance would account for $90,000 (discounted) or $13,000 annualized; cabin safety would account for $16 million (discounted) or $2 million annualized; part 119 would account for $2 million (discounted) or $236,000 annualized; and certification would account for $39 million (discounted) or $6 million annualized.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this proposed rule would have a significant economic impact on any operator owning more than two 10 to 19 seat airplanes (2 airplanes x $27,000 per airplane = $54,000) or any operator owning more than four 20 to 30 seat airplanes (4 airplanes x $14,500 per airplane = $58,000). In forecasting the number of airplanes that each small operator would own, the FAA assumed that the existing small operators would continue to own the same number of airplanes they currently own and the additional forecasted number of small operators would each own 9 airplanes that have 10 to 19 seats (so as not to underestimate the impact on small entities). Fourteen small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur annualized costs exceeding the $67,000 threshold. The FAA has made a determination that the proposed rule would result in a significant economic impact on a substantial number of small entities.

B. *Initial regulatory flexibility analysis.* As the proposed rule could have a significant economic impact on a substantial number of small part 135 commuter operators, an initial regulatory flexibility analysis has been prepared. This analysis assures that agencies have examined selected regulatory alternatives which could minimize the economic burdens of the proposed rule on small entities. As delineated in section 603(b) of the RFA, this initial regulatory flexibility analysis is required to identify: (1) the reasons why the agency is considering the action, (2) the objectives and legal basis for the proposed rule, (3) the kind and number of small entities to which the proposed rule will apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, and (5) all Federal rules which may duplicate, overlap or conflict with the proposed rule. Section 603(c) of the RFA further requires that each initial regulatory flexibility analysis contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. As required by sections 603(b) and (c), the following analysis addresses the proposed rule as it relates to the affected small commuter operators.

A. *Why agency action is taken.* The main reason for this proposal is that the FAA Administrator, when prescribing safety regulations, is required by statute to consider ''the duty of an air carrier to provide service with the highest possible degree of safety in the public interest.'' The FAA has determined that the most appropriate way to meet this statutory mandate is to require scheduled passenger operations in

airplanes with 10 or more passenger seats and scheduled passenger operations in turbojets to meet, where appropriate, at least the minimum requirements of part 121. The need for this rulemaking is supported by a study conducted by the National Transportation Safety Board, testimony from congressional hearings, and accident statistics. More detailed reasons for the agency action are provided in the NPRM.

B. *Objective of and legal basis for the proposed rule.* The objective of the proposed rule is to increase safety in scheduled passenger-carrying operations. The proposed rule would also clarify, update, and consolidate the certification and operations specifications requirements for persons who operate airplanes for compensation or hire. This objective is more thoroughly discussed in the preamble to the NPRM.

The legal basis of the proposed rule is 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1431, 1472, 1485, 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

C. *Description of the small entities affected by the proposed rule.* The proposal would require certain commuter operators that now conduct operations under part 135 to conduct those operations under part 121. The commuter operators that would be affected are those conducting scheduled passenger-carrying operations in airplanes that have a passenger seating configuration of 10 to 30 seats and those conducting scheduled operations in turbojets.

The number of small entities that would be affected by the proposed rule is based on the average forecasted number of operators for the 10-year period (1996 to 2005). Using the percentage of small commuter operators to total commuter operators in 1994, the FAA projects that an average of 24 of the 75 forecasted commuter operators would be defined as small. The FAA also estimates that the 75 commuter operators would own 1,267 airplanes, of which the 24 small commuter operators would own 108 airplanes.

D. *Compliance requirements of the proposed rule.* The proposal would require certain part 135 operators to comply with specific part 119 and 121 standards. While all commuter operators owning airplanes with 10 or more passenger seats would come under part 121, wherever compliance would not be feasible for smaller airplanes, part 121 would provide an exception. These exceptions include the requirements for low-altitude windshear equipment, flight data recorders, and flight attendants in airplanes with 10 to 19 passenger seats. In addition, these operators will continue to comply with several part 135 requirements as they currently exist, such as the ground proximity warning system, the traffic alert and collision avoidance system, and cockpit voice recorders. The preamble to the NPRM provides a more thorough discussion of the compliance requirements of the proposed rule.

E. *Overlap of the proposed rule with other Federal regulations.* No other Federal rules would duplicate, overlap, or conflict with the proposed rule.

F. *Alternatives to the proposed rule.* According to the RFA, significant alternatives may include: the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; the use of performance rather than design standards; or an exemption from coverage of the rule, or any part thereof, for such small entities. The FAA considered two alternative approaches to the proposed rule.

*Alternative one—retain status quo.* This alternative would retain the status quo by allowing part 135 operators to continue operating under the existing part 135 standards. As there would be no changes in the existing requirements, there would be no change in the compliance costs. However, there would also be no improvement in benefits and the level of safety would remain the same for the commuter operators. The FAA rejected this approach because it does not meet the agency's objective of maintaining and enhancing aviation safety for the traveling public.

*Alternative two—same as the proposed rule except for elimination of the proposed flight time limitations and rest requirements and the proposed dispatcher requirements.* This alternative would be similar to the proposed rule except for elimination of: (1) The proposed flight time limitations and rest requirements for all flight crewmembers and (2) the proposed dispatcher requirements. This means that part 135 commuter operators would not need to hire additional pilots and flight attendants to meet the proposed flight time limitations and rest requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $75 million (discounted) or $11 million annualized. Also, additional dispatchers would not be needed to meet the proposed dispatcher requirements, resulting in a reduction in proposed compliance costs over the 10-year period of $57 million (discounted) or $8 million annualized. Thus, this alternative would result in a compliance cost reduction over the 10-year period of about $132 million (discounted) or about $19 million annualized. By subtracting these compliance costs from those for the proposed rule, the FAA estimates that this alternative would result in compliance costs of about $66 million (discounted) or about $9 million annualized. The annualized cost per airplane would be about $11,100 for 10-to-19 seat airplanes and would be about $1,300 for 20 to 30 seat airplanes.

Given the threshold annualized cost of $67,000 for a small commuter operator, the FAA estimates that this alternative would have a significant economic impact on any operator owning more than six 10-to-19-seat airplanes (6 airplanes x $11,100 per airplane = $66,600) or any operator owning more than fifty-one 20-to-30-seat airplanes (51 airplanes x $1,300 per airplane = $66,300). Six small commuter operators owning 10-to-19-seat airplanes and one small commuter operator owning both 10-to-19-seat and 20-to-30-seat airplanes would each incur an annualized cost of more than $67,000. However, the one small commuter operator owning 20-to-30-seat airplanes only would not incur an annualized cost exceeding the $67,000 threshold. This alternative would not impact a substantial number of small operators. This assessment is based on the fact that only 7 of the 24 small operators would incur costs in excess of the threshold. Therefore, this alternative would not have a significant economic impact on a substantial number of small entities.

Executive Order (E. O.) 12866 states that in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net safety benefits, unless a statute requires another regulatory approach. To ensure that commuter airplanes are as safe as possible, the FAA believes that flight time rest and duty requirements and dispatcher requirements are necessary. With respect to flight time limits, the FAA believes that there is no longer a justification for the difference between commuter operations conducted under part 121 and those conducted under part 135. Both types of operators are conducting similar types of operations in similar environments. In some instances the same operator is flying operations under both parts 121 and 135. With respect to the flight dispatch system, the FAA believes that this system is the safest means for maintaining operational control. It

allows for information relevant to the flight to be accessed and passed on to the pilot throughout the flight. In addition, if an inflight emergency occurs, the pilot and the dispatcher can communicate on the safest measures to follow. A more thorough discussion of the reasons the FAA believes that these requirements are necessary is provided in the preamble. The FAA concludes that the reduction in the estimated compliance costs resulting from elimination of these requirements does not justify the expected significant corresponding decrease in benefits. Therefore, the FAA is rejecting this alternative because it would not maximize net benefits as required under E.O. 12866.

International Trade Impact Assessment

The impact of the proposed rule on international trade is expected to be minimal. With regard to commuter carrier operations, most of the nation's commuter airlines operate on domestic routes, with only limited international operations and no transoceanic routes. These international operations consist of a number of cross-border services between cities in the United States and locations near the borders of Canada and Mexico. There are relatively few carriers engaging in this kind of commuter service, with only a limited number of flights. Most of these services are between points in the border states, such as California, Arizona, New Mexico, Texas, Wisconsin, Michigan, and New York, flying to Mexican and Canadian cities. Therefore, the primary impact of this proposed rule is expected to be in the domestic air carrier market, with little impact on international trade.

Commuter airplanes are sold worldwide, and there are some potential international trade impacts. This rulemaking could impact the competitiveness of airplanes made for the U.S. market that are later resold on the international market. Under the proposed rulemaking, commuter airplanes made for the American market would include new equipment and upgrades necessary to meet the expanded safety requirements. These improvements would increase the cost and maintenance requirements for the airplanes and may negatively affect their sales potential in foreign markets, particularly to customers in developing nations.

Many of the smaller air carriers in the developing world fly under significantly lower safety requirements than are required in the United States. Customers in those countries may not be interested in purchasing airplanes that exceed minimum requirements. Further, these operators may lack the facilities, equipment, and expertise that are necessary to keep these more sophisticated systems operational. Therefore, when purchasing airplanes, either new or second hand, they focus on airplanes that rely on a minimum of complex systems and equipment.

Although sales of smaller airplanes to developing countries represent an important component of the market, the largest markets by far are in North America and western Europe. In this case, since the airplanes would have to operate under similar standards as before their resale, there would be no impact. According to recent estimates, the worldwide market for commuter airplanes is estimated to be almost $20 billion over the next ten years, with a projected 59 percent of those sales occurring in North America. Sales to Europe account for approximately 20 percent of the sales, with the remainder spread throughout the rest of the world. Therefore, this proposed rule would only have a negative impact on less than 21 percent of foreign sales of U.S.-made airplanes.

This proposed rule is also not expected to result in an improved market position for foreign airplane manufacturers. Their status with regard to market share or sales in the U.S. is not expected to change in response to this proposed rule.

Federalism Implications

The proposed regulations do not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among various levels of government. Thus, in accordance with Executive Order 12612, it is determined that such a regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirements associated with this rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. Chapter 35 under OMB No. (new), TITLE: Commuter Operations and General Certification and Operations Requirements; PROPOSED USE OF INFORMATION: The FAA will use this information to determine if carriers are operating in accordance with minimum safety standards; FREQUENCY: As required; BURDEN ESTIMATE: 1,370; RESPONDENTS: Part 135 carriers conducting scheduled passenger-carrying operations in airplanes with 10–30 seats; FORMS: FAA Form 8400–6 and 8070–1; AVERAGE BURDEN HOURS PER RESPONDENT: 18; For further information contact: IRM Strategies Division, M–32, Office of the Secretary of Transportation, 400 Seventh Street, SW, Washington, DC, 20590, (202) 366–4735. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Washington, DC, 20503, Attention: Desk Officer for FAA. It is requested that comments sent to OMB also be sent to the FAA rulemaking docket for this proposed action.

Conclusion

For the reasons set forth under the heading ''Regulatory Analysis,'' the FAA has determined that this proposed regulation: (1) is a significant rule under Executive Order 12866; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings ''Trade Impact Statement'' and ''Regulatory Flexibility Determination,'' the FAA certifies that the proposed rule would have a significant economic impact on a substantial number of small entities. A copy of the full regulatory evaluation is filed in the docket and may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

**List of Subjects**

*14 CFR Part 119*

Administrative practice and procedures, Air carriers, Air taxis, Aircraft, Aviation safety, Charter flights, Commuter operations, Reporting and recordingkeeping requirements.

*14 CFR Part 121*

Air carriers, Aircraft, Airmen, Aviation safety, Charter flights, Reporting and recordingkeeping requirements.

*14 CFR Part 125*

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 127*

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

*14 CFR Part 135*

Aircraft, Airplane, Airworthiness, Air transportation.

**VIII. The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend the Federal Aviation Regulations (14 CFR parts 119, 121, 125, 127, and 135) as follows:

1. The heading of Subchapter G is revised to read:

**SUBCHAPTER G—AIR CARRIERS AND OPERATORS FOR COMPENSATION OR HIRE: CERTIFICATION AND OPERATIONS**

2. A new part 119 is added to 14 CFR Chapter I, Subchapter G, to read as follows:

## PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

### Subpart A—General

Sec.

119.1 Applicability.
119.3 Definitions.
119.5 Certification, authorizations, and prohibitions.
119.7 Operations specifications.
119.9 Use of business names.

### Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Parts 121, 125, and 135 of This Chapter

119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.
119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.
119.25 Rotorcraft operations: Direct air carriers and commercial operators.

### Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

119.31 Applicability.
119.33 General requirements.
119.35 Certificate application.
119.37 Contents of an Air Carrier Certificate or Operating Certificate.
119.39 Issuing or denying a certificate.
119.41 Amending a certificate.
119.43 Certificate holder's duty to maintain operations specifications.
119.45 Use of operations specifications.
119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.
119.49 Contents of operations specifications.
119.51 Amending operations specifications.
119.53 Wet leasing of aircraft.
119.55 Obtaining deviation authority to perform operations under a U.S. military contract.
119.57 Obtaining deviation authority to perform an emergency operation.
119.58 Emergencies requiring immediate decision and action.
119.59 Conducting tests and inspections.
119.61 Duration of certificate and operations specifications.
119.63 Recency of operation.
119.65 Management personnel required for operations conducted under part 121 of this chapter.
119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.
119.69 Management personnel required for operations conducted under part 135 of this chapter.
119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

### Subpart A—General

#### § 119.1 Applicability.

(a) This part applies to each person operating or intending to operate civil aircraft—

(1) As an air carrier or commercial operator, or both, in air commerce or

(2) When common carriage is not involved, in operations of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.

(b) This part prescribes—

(1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;

(2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under parts 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;

(3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;

(4) Requirements affecting wet leasing of aircraft;

(5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and

(6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.

(c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by parts 119, 121, 125, or 135 of this chapter.

(d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.

(e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—

(1) Student instruction;

(2) Nonstop sightseeing flights that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport, except that these operations must comply with §§ 121.455, 121.457, 135.249, 135.251, 135.253, 135.255, and 135.353 of this chapter;

(3) Ferry or training flights;

(4) Aerial work operations, including—

(i) Crop dusting, seeding, spraying, and bird chasing;

(ii) Banner towing;

(iii) Aerial photography or survey;

(iv) Fire fighting;

(v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and

(vi) Powerline or pipeline patrol;

(5) Sightseeing flights conducted in hot air balloons;

(6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;

(7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—

(i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;

(ii) Each flight is made under day VFR conditions;

(iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;

(iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;

(v) The number of flights does not exceed a total of six in any calendar year;

(vi) Each flight has been approved by the Administrator; and

(vii) Cargo is not carried in or on the helicopter;

(8) Operations conducted under part 133 of this chapter or 375 of this title;

(9) Emergency mail service conducted under 49 U.S.C. 41906; or

(10) Operations conducted under the provisions of § 91.321 of this chapter.

**§ 119.3 Definitions.**

For the purpose of Subchapter G of this chapter, the term—

*All-cargo operation* means any operation for compensation or hire that is other than a passenger-carrying operation.

*Certificate-holding district office* means the Flight Standards District Office that has responsibility for administering the certificate and is charged with the overall inspection of the certificate holder's operations.

*Commuter operation* means any scheduled operation conducted by any person operating—

(1) Airplanes, other than turbojet powered airplanes, having a maximum passenger-seating configuration of 9 seats or less, excluding any required crewmember seat, and a maximum payload capacity of 7,500 pounds or less or

(2) Rotorcraft.

*Direct air carrier* means a person who provides or offers to provide air transportation and who has control over the operational functions performed in providing that transportation.

*Domestic operation* means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any points within the 48 contiguous States of the United States or the District of Columbia; or

(ii) Between any points entirely within any State, territory, or possession of the United States; or

(iii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any specifically authorized point located outside the 48 contiguous States of the United States or the District of Columbia.

*Empty weight* means the weight of the airframe, engines, propellers, rotors, and fixed equipment. Empty weight excludes the weight of the crew and payload, but includes the weight of all fixed ballast, unusable fuel supply, undrainable oil, total quantity of engine coolant, and total quantity of hydraulic fluid.

*Flag operation* means any scheduled operation conducted by any person operating any airplane described in paragraph (1) of this definition between the locations described in paragraph (2) of this definition:

(1) Airplanes:

(i) Turbojet-powered airplanes;

(ii) Airplanes having a passenger-seating configuration of more than 9 seats, excluding any required crewmember seat; or

(iii) Airplanes having a payload capacity of more than 7,500 pounds.

(2) Locations:

(i) Between any point within the State of Alaska or the State of Hawaii or any territory or possession of the United States and any point outside the State of Alaska or the State of Hawaii or any territory or possession of the United States, respectively; or

(ii) Between any point within the 48 contiguous States of the United States or the District of Columbia and any point outside the 48 contiguous States of the United States or the District of Columbia.

*Justifiable aircraft equipment* means any equipment necessary for the operation of the aircraft. It does not include equipment or ballast specifically installed, permanently or otherwise, for the purpose of altering the empty weight of an aircraft to meet the maximum payload capacity.

*Kind of operation* means one of the various operations a certificate holder is authorized to conduct, as specified in its operations specifications, i.e., domestic, flag, supplemental, commuter, or on-demand operations.

*Maximum payload capacity* means:

(1) For an aircraft for which a maximum zero fuel weight is prescribed in FAA technical specifications, the maximum zero fuel weight, less empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum flightcrew, foods and beverages, and supplies and equipment related to foods and beverages, but not including disposable fuel or oil).

(2) For all other aircraft, the maximum certificated takeoff weight of an aircraft, less the empty weight, less all justifiable aircraft equipment, and less the operating load (consisting of minimum fuel load, oil, and flightcrew). The allowance for the weight of the crew, oil, and fuel is as follows:

(i) Crew—for each crewmember required by the Federal Aviation Regulations—

(A) For male flight crewmembers—180 pounds.

(B) For female flight crewmembers—140 pounds.

(C) For male flight attendants—180 pounds.

(D) For female flight attendants—130 pounds.

(E) For flight attendants not identified by gender—140 pounds.

(ii) Oil—350 pounds.

(iii) Fuel—the minimum weight of fuel required by the applicable Federal Aviation Regulations for a flight between domestic points 174 nautical miles apart under VFR weather conditions that does not involve extended overwater operations.

*Maximum zero fuel weight* means the maximum permissible weight of an aircraft with no disposable fuel or oil. The zero fuel weight figure may be found in either the aircraft type certificate data sheet, the approved Aircraft Flight Manual, or both.

*Noncommon carriage* means an aircraft operation for compensation or hire that does not involve a holding out to others.

*On-demand operation* means any operation for compensation or hire that is one of the following:

(1) Passenger-carrying operations in which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative that are any of the following types of operations:

(i) Common carriage operations conducted with airplanes, including turbojet-powered airplanes, having a passenger-seating configuration of 30 seats or fewer, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, except that operations using a specific airplane that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations are considered supplemental operations;

(ii) Noncommon carriage operations conducted with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, or a payload capacity of less than 6,000 pounds; or

(iii) Any rotorcraft operation.

(2) All-cargo operations conducted with airplanes having a payload capacity of 7,500 pounds or less, or with rotorcraft.

*Passenger-carrying operation* means any aircraft operation carrying any person, unless the only persons on the aircraft are those identified in § 121.583(a) or 135.85 of this chapter, as applicable. An aircraft used in a passenger-carrying operation may also carry cargo or mail in addition to passengers.

*Principal base of operations* means the primary operating location of a certificate holder as established by the certificate holder.

*Provisional airport* means an airport approved by the Administrator for use by a certificate holder for the purpose of providing service to a community when the regular airport used by the certificate holder is not available.

*Regular airport* means an airport used by a certificate holder in scheduled operations and listed in its operations specifications.

*Scheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the certificate holder or its representative offers in advance the departure location, departure time, and arrival location. It does not include any operation that is a charter operation.

*Supplemental operation* means any common carriage operation for compensation or hire conducted with any airplane described in paragraph (1) of this definition that is a type of operation described in paragraph (2) of this definition:

(1) Airplanes:

(i) Airplanes having a passenger-seating configuration of more than 30 seats, excluding any required crewmember seat;

(ii) Airplanes having a payload capacity of more than 7,500 pounds; or

(iii) Each airplane having a passenger-seating configuration of more than 9 seats and less than 31 seats, excluding any required crewmember seat and any turbojet powered airplane, that is also used in domestic or flag operations and that is so listed in the operations specifications as required by § 119.49(a)(4) for those operations.

(2) Types of operation:

(i) Operations for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative or

(ii) All-cargo operations.

*Wet lease* means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.

*When common carriage is not involved* or *operations not involving common carriage* means any of the following:

(1) Noncommon carriage.

(2) Operations in which persons or cargo are transported without compensation or hire.

(3) Operations not involving the transportation of persons or cargo.

**§ 119.5 Certifications, authorizations, and prohibitions.**

(a) A person authorized by the Administrator to conduct operations as a direct air carrier will be issued an Air Carrier Certificate.

(b) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations as a U.S. commercial operator, will be issued an Operating Certificate.

(c) A person who is not authorized to conduct direct air carrier operations, but who is authorized by the Administrator to conduct operations when common carriage is not involved as an operator of U.S.-registered civil airplanes with a seating configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more, will be issued an Operating Certificate.

(d) A person authorized to engage in common carriage under part 121 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such common carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(e) A person authorized to engage in noncommon carriage under part 125 or part 135 of this chapter, or both, shall be issued only one certificate authorizing such noncommon carriage, regardless of the kind of operation or the class or size of aircraft to be operated.

(f) A person conducting operations under more than one paragraph of §§ 119.21, 119.23, or 119.25 shall conduct those operations in compliance with—

(1) The requirements specified in each paragraph of those sections for the kind of operation conducted under that paragraph and

(2) The appropriate authorizations, limitations, and procedures specified in the operations specifications for each kind of operation.

(g) No person may operate as a direct air carrier or as a commercial operator without, or in violation of, an appropriate certificate and appropriate operations specifications. No person may operate as a direct air carrier or as a commercial operator in violation of any deviation or exemption authority, if issued to that person or that person's representative.

(h) A person holding an Operating Certificate authorizing noncommon carriage operations shall not conduct any operations in common carriage. A person holding an Air Carrier Certificate or Operating Certificate authorizing common carriage operations shall not conduct any operations in noncommon carriage.

(i) No person may operate as a direct air carrier without holding appropriate economic authority from the Department of Transportation.

(j) A certificate holder under this part may not operate aircraft under part 121 or part 135 of this chapter in a geographical area unless its operations specifications specifically authorize the certificate holder to operate in that area.

**§ 119.7 Operations specifications.**

(a) Each certificate holder's operations specifications must contain—

(1) The authorizations, limitations, and certain procedures under which each kind of operation, if applicable, is to be conducted and

(2) Certain other procedures under which each class and size of aircraft is to be operated.

(b) Except for operations specifications paragraphs identifying authorized kinds of operations, operations specifications are not a part of a certificate.

**§ 119.9 Use of business names.**

(a) A certificate holder under this part may not operate an aircraft under part 121 or part 135 of this chapter using a business name other than a business name appearing in the certificate holder's operations specifications.

(b) Unless otherwise authorized by the Assistant Administrator for Civil Aviation Security, no person may operate an aircraft under part 121 or part 135 of this chapter unless the name of the certificate holder who is operating the aircraft is legibly displayed on the aircraft and is clearly visible and readable from the outside of the aircraft to a person standing on the ground at any time except during flight time. The means of displaying the name on the aircraft and its readability must be acceptable to the Administrator.

## Subpart B—Applicability of Operating Requirements to Different Kinds of Operations Under Part 121, 125, and 135 of This Chapter

**§ 119.21 Direct air carriers and commercial operators engaged in intrastate common carriage with airplanes.**

(a) Each person who conducts operations as a direct air carrier or as a commercial operator engaged in intrastate common carriage of persons or property for compensation or hire in air commerce, shall comply with the certification and operations specifications requirements in subpart C of this part, and shall conducts its:

(1) Domestic operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a showing of safety in air commerce, the Administrator may permit persons who

conduct domestic operations between any point located within Alaska's Aleutian Islands chain and any point in the State of Alaska to comply with the requirements applicable to flag operations contained in subpart U of part 121 of this chapter.

(2) Flag operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(3) Supplemental operations in accordance with the applicable requirements of part 121 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements. However, based on a determination of safety in air commerce, the Administrator may authorize or require the following operations to be conducted under paragraph (a)(1) or (2) of this section:

(i) Passenger-carrying operations which are conducted between points that are also served by the certificate holder's domestic or flag operations.

(ii) All-cargo operations which are conducted regularly and frequently between the same two points.

(4) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(5) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) Persons who are subject to the requirements of paragraph (a)(4) of this section may conduct those operations in accordance with the requirements of paragraph (a)(1) or (a)(2) of this section, provided they obtain authorization from the Administrator.

(c) Persons who are subject to the requirements of paragraph (a)(5) of this section may conduct those operations in accordance with the requirements of paragraph (a)(3) of this section, provided they obtain authorization from the Administrator.

**§ 119.23 Operators engaged in passenger-carrying operations, cargo operations, or both with airplanes when common carriage is not involved.**

(a) Each person who conducts operations when common carriage is not involved with airplanes having a passenger-seating configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, shall, unless deviation authority is issued:

(1) Comply with the certification and operations specifications requirements of part 125 of this chapter;

(2) Conduct its operations with those airplanes in accordance with the requirements of part 125 of this chapter; and

(3) Be issued operations specifications in accordance with those requirements.

(b) Each person who conducts noncommon carriage operations for compensation or hire with airplanes having a passenger-seating configuration of less than 20 seats, excluding any required crewmember seat, and a payload capacity of less than 6,000 pounds shall:

(1) Comply with the certification and operations specifications requirements in Subpart C of this part;

(2) Conduct those operations in accordance with the requirements of part 135 of this chapter, except for those requirements applicable only to commuter operations; and

(3) Be issued operations specifications in accordance with those requirements.

**§ 119.25 Rotorcraft operations: direct air carriers and commercial operators.**

Each person who conducts rotorcraft operations for compensation or hire must comply with the certification and operations specifications requirements of Subpart C of this part, and shall conduct its:

(a) Commuter operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

(b) On-demand operations in accordance with the applicable requirements of part 135 of this chapter, and shall be issued operations specifications for those operations in accordance with those requirements.

## Subpart C—Certification, Operations Specifications, and Certain Other Requirements for Operations Conducted Under Part 121 or Part 135 of this Chapter

**§ 119.31 Applicability.**

This subpart sets out certification requirements and prescribes the content of operations specifications and certain other requirements for operations conducted under part 121 or part 135 of this chapter.

**§ 119.33 General requirements.**

(a) A person may not operate as a direct air carrier unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Air Carrier Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(b) A person other than a direct air carrier may not conduct any commercial passenger or cargo aircraft operation for compensation or hire under part 121 or part 135 of this chapter unless that person—

(1) Is a citizen of the United States;

(2) Obtains an Operating Certificate; and

(3) Obtains operations specifications that prescribe the authorizations, limitations, and procedures under which each kind of operation must be conducted.

(c) Each applicant for a certificate under this part shall conduct proving tests as authorized by the Administrator during the application process for authority to conduct operations under part 121 or 135 of this chapter. All proving tests must be conducted in a manner acceptable to the Administrator. All proving tests must be conducted under the appropriate operating and maintenance requirements of part 121 or 135 of this chapter that would apply if the applicant were fully certificated. The Administrator will issue a letter of authorization to each person stating the various authorities under which the proving tests shall be conducted.

**§ 119.35 Certificate application.**

(a) A person applying to the Administrator for an Air Carrier Certificate or Operating Certificate under this part (applicant) must submit an application—

(1) In a form and manner prescribed by the Administrator and

(2) Containing any information the Administrator requires the applicant to submit.

(b) Each applicant must submit the application to the Administrator at least 90 days before the date of intended operation.

(c) Each applicant for the original issue of an operating certificate for the purpose of conducting intrastate common carriage operations under part 121 or part 135 of this chapter must submit an application in a form and manner prescribed by the Administrator to the Flight Standards District Office in whose area the applicant proposes to establish or has established his or her principal operations base.

(d) Each application submitted under paragraph (c) of this section must contain a signed statement showing the following:

(1) For corporate applicants:

(i) The name and address of each stockholder who owns five percent or more of the total voting stock of the corporation, and if that stockholder is not the sole beneficial owner of the stock, the name and address of each beneficial owner. An individual is considered to own the stock owned, directly or indirectly, by or for his or her spouse, children, grandchildren, or parents.

(ii) The name and address of each director and each officer, and each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(iii) The name and address of each person directly or indirectly controlling or controlled by the applicant, and each person under direct or indirect control with the applicant.

(2) For non-corporate applicants:

(i) The name and address of each person having a financial interest therein and the nature and extent of that interest.

(ii) The name and address of each person employed or who will be employed in a management position described in §§ 119.65 and 119.69, as applicable.

(e) In addition, each applicant for the original issue of an operating certificate must submit with the application a signed statement showing—

(1) The financial information listed in paragraph (h) of this section; and

(2) The nature and scope of its intended operation, including the name and address of each person, if any, with whom the applicant has a contract to provide services as a commercial operator and the scope, nature, date, and duration of each of those contracts.

(f) Each applicant for, or holder of, a certificate issued under this part, shall notify the Administrator within 10 days after—

(1) A change in any of the persons, or the names and addresses of any of the persons, submitted to the Administrator under paragraph (d)(1) or (d)(2) of this section; or

(2) A change in the financial information submitted to the Administrator under paragraph (h) of this section that occurs while the application for the issue is pending before the FAA and that would made the applicant's financial situation substantially less favorable than originally reported.

(g) Each financial statement containing financial information required by paragraph (h) of this section must be based on accounts prepared and maintained on an accrual basis in accordance with generally accepted accounting principles applied on a consistent basis, and must contain the name and address of the applicant's public accounting firm, if any. Information submitted must be signed by an officer, owner, or partner of the applicant or certificate holder.

(h) Each applicant for the original issue of an operating certificate must submit the following financial information:

(1) A balance sheet that shows assets, liabilities, and net worth, as of a date not more than 60 days before the date of application.

(2) An itemization of liabilities more than 60 days past due on the balance sheet date, if any, showing each creditor's name and address, a description of the liability, and the amount and due date of the liability.

(3) An itemization of claims in litigation, if any, against the applicant as of the date of application showing each claimant's name and address and a description and the amount of the claim.

(4) A detailed projection of the proposed operation covering 6 complete months after the month in which the certificate is expected to be issued including—

(i) Estimated amount and source of both operating and nonoperating revenue, including identification of its existing and anticipated income producing contracts and estimated revenue per mile or hour of operation by aircraft type;

(ii) Estimated amount of operating and nonoperating expenses by expense objective classification; and

(iii) Estimated net profit or loss for the period.

(5) An estimate of the cash that will be needed for the proposed operations during the first 6 months after the month in which the certificate is expected to be issued, including—

(i) Acquisition of property and equipment (explain);

(ii) Retirement of debt (explain);

(iii) Additional working capital (explain);

(iv) Operating losses other than depreciation and amortization (explain); and

(v) Other (explain).

(6) An estimate of the cash that will be available during the first 6 months after the month in which the certificate is expected to be issued, from—

(i) Sale of property or flight equipment (explain);

(ii) New debt (explain);

(iii) New equity (explain);

(iv) Working capital reduction (explain);

(v) Operations (profits) (explain);

(vi) Depreciation and amortization (explain); and

(vii) Other (explain).

(7) A schedule of insurance coverage in effect on the balance sheet date showing insurance companies; policy numbers; types, amounts, and period of coverage; and special conditions, exclusions, and limitations.

(8) Any other financial information that the Administrator requires to enable him to determine that the applicant has sufficient financial resources to conduct his or her operations with the degree of safety required in the public interest.

**§ 119.37 Contents of an Air Carrier Certificate or Operating Certificate.**

The Air Carrier Certificate or Operating Certificate includes—

(a) The certificate holder's name;

(b) The location of the certificate holder's principal base of operations;

(c) The certificate number;

(d) The certificate's effective date;

(e) The name or the designator of the certificate-holding district office;

(f) Kinds of operations authorized; and

(g) A certification that—

(1) In the case of an Air Carrier certificate, the certificate holder meets the appropriate requirements of this chapter and holds any required economic authority from the Department of Transportation, authorizing it to conduct common carriage operations or

(2) In the case of an Operating Certificate, the certificate holder—

(i) Meets the appropriate requirements of this chapter authorizing it to conduct intrastate common carriage operations or

(ii) Meets the appropriate requirements of this chapter authorizing it to conduct noncommon carriage operations.

**§ 119.39 Issuing or denying a certificate.**

(a) An applicant may be issued an Air Carrier Certificate or Operating Certificate if after investigation, the Administrator finds that the applicant—

(1) Meets the applicable requirements of this part;

(2) Holds the economic authority applicable to the kinds of operations to be conducted, issued by the Department of Transportation, if required; and

(3) Is properly and adequately equipped in accordance with the requirements of this chapter and is able to conduct a safe operation under appropriate provisions of part 121 or part 135 of this chapter and operations specifications issued under this part.

(b) An application for a certificate may be denied if the Administrator finds that—

(1) The applicant is not properly or adequately equipped or is not able to conduct safe operations under this subchapter;

(2) The applicant previously held an Air Carrier Certificate or Operating Certificate which was revoked;

(3) The applicant intends to or fills a key management position listed in § 119.65(a) or § 119.69(a), as applicable, with an individual who exercised control over or who held the same or a similar position with a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process;

(4) An individual who will have control over or have a substantial ownership interest in the applicant had the same or similar control or interest in a certificate holder whose certificate was revoked, or is in the process of being revoked, and that individual materially contributed to the circumstances causing revocation or causing the revocation process; or

(5) In the case of an applicant for an Operating Certificate for intrastate common carriage that for financial reasons the applicant is not able to conduct a safe operation.

**§ 119.41 Amending a certificate.**

(a) The Administrator may amend any certificate issued under this part if—

(1) The Administrator under section 609 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1429), and part 13 of this chapter, determines that safety in air commerce and the public interest requires the amendment or

(2) The certificate holder applies for the amendment and the certificate holding district office determines that safety in air commerce and the public interest allows the amendment.

(b) When the Administrator proposes to issue an order amending, suspending, or revoking all or part of any certificate, the procedure in § 13.19 of this chapter applies.

(c) When the certificate holder applies for an amendment of its certificate, the following procedure applies:

(1) The certificate holder must file an application to amend its certificate with the certificate holding district office at least 15 days before the date proposed by the applicant for the amendment to become effective, unless the administrator approves filing within a shorter period and

(2) The application must be submitted to the certificate-holding district office in the form and manner prescribed by the Administrator.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning amendments of a certificate, the following procedure applies:

(1) The petition for reconsideration must be made within 30 days after the certificate holder receives the notice of denial and

(2) The certificate holder must petition for reconsideration to the Director, Flight Standards Service.

**§ 119.43 Certificate holder's duty to maintain operations specifications.**

(a) Each certificate holder shall maintain a complete and separate set of its operations specifications at its principal base of operations.

(b) Each certificate holder shall insert pertinent excerpts of its operations specifications, or references thereto, in its manual and shall—

(1) Clearly identify each such excerpt as a part of its operations specifications and

(2) State that compliance with each operations specifications requirement is mandatory.

**§ 119.45 Use of operations specifications.**

(a) Each certificate holder shall keep each of its employees and other persons used in its operations informed of the provisions of its operations specifications that apply to that employee's or person's duties and responsibilities.

(b) Each certificate holder shall maintain a complete and separate set of its operations specifications. In addition, each certificate holder shall insert pertinent excerpts of its operations specifications, or reference thereto, in its manual in such a manner that they retain their identity as operations specifications.

**§ 119.47 Maintaining a principal base of operations, main operations base, and main maintenance base; change of address.**

(a) Each certificate holder must maintain a principal base of operations. Each certificate holder may also establish a main operations base and a main maintenance base which may be located at either the same location as the principal base of operations or at separate locations.

(b) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a certificate holder must provide written notification to its certificate holding district office.

**§ 119.49 Contents of operations specifications.**

(a) Each certificate holder conducting domestic, flag, or commuter operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial numbers of each aircraft authorized for use, and each regular and alternate airport to be used in scheduled operations, and, except for commuter operations, each provisional and refueling airport.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (a)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft or airport not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Airport limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Interline equipment interchange requirements, if relevant.

(11) Aircraft wet lease information required by § 119.53(c).

(12) Any authorized deviation and exemption granted from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(b) Each certificate holder conducting supplemental operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and, if different, the address

that shall serve as the primary point of contact for correspondence between the FAA and the certificate holder and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Type of aircraft, registration markings, and serial number of each aircraft authorized for use.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (b)(4) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(5) Kinds of operations authorized.

(6) Authorization and limitations for routes and areas of operations.

(7) Special airport authorizations and limitations.

(8) Time limitations, or standards for determining time limitations, for overhauling, inspecting, and checking airframes, engines, propellers, appliances, and emergency equipment.

(9) Authorization for the method of controlling weight and balance of aircraft.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorization or requirement to conduct supplemental operations as provided by § 119.21(a)(3) (i) or (ii).

(12) Any authorized deviation or exemption from any requirement of this chapter.

(13) Any other item the Administrator determines is necessary.

(c) Each certificate holder conducting on-demand operations must obtain operations specifications containing all of the following:

(1) The specific location of the certificate holder's principal base of operations, and if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the name and mailing address of the certificate holder's agent for service.

(2) Other business names under which the certificate holder may operate.

(3) Reference to the economic authority issued by the Department of Transportation, if required.

(4) Kind and area of operations authorized.

(5) Category and class of aircraft that may be used in those operations.

(6) Type of aircraft, registration markings, and serial number of each aircraft that is subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(i) Subject to the approval of the Administrator with regard to form and content, the certificate holder may incorporate by reference the items listed in paragraph (c)(6) of this section into the certificate holder's operations specifications by maintaining a current listing of those items and by referring to the specific list in the applicable paragraph of the operations specifications.

(ii) The certificate holder may not conduct any operation using any aircraft not listed.

(7) Registration markings of each aircraft that is to be inspected under an approved aircraft inspection program under § 135.419 of this chapter.

(8) Time limitations or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft that are subject to an airworthiness maintenance program required by § 135.411(a)(2) of this chapter.

(9) Additional maintenance items required by the Administrator under § 135.421 of this chapter.

(10) Aircraft wet lease information required by § 119.53(c).

(11) Any authorized deviation or exemption from any requirement of this chapter.

(12) Any other item the Administrator determines is necessary.

(d) Each certificate holder shall keep each of its employees informed of the provisions of its operations specifications that apply to the employee's duties and responsibilities.

**§ 119.51 Amending operations specifications.**

(a) The Administrator may amend any operations specifications issued under this part if—

(1) The Administrator, on his own initiative, determines that safety in air commerce and the public interest require the amendment or

(2) The certificate holder applies for the amendment, and the Administrator determines that safety in air commerce and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment to a certificate holder's operations specifications, the following procedure applies:

(1) The certificate-holding district office notifies the certificate holder in writing of the proposed amendment.

(2) The certificate-holding district office sets a reasonable period (but not less than seven days) within which the certificate holder may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the certificate-holding district office notifies the certificate holder of—

(i) The adoption of the proposed amendment;

(ii) The partial adoption of the proposed amendment; or

(iii) The withdrawal of the proposed amendment.

(4) If the certificate-holding district office issues an amendment to the operations specifications, it becomes effective not less than 30 days after the certificate holder receives notice of it unless—

(i) The certificate-holding district office finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety in air commerce or

(ii) The certificate holder petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the certificate holder applies for an amendment to its operations specifications, the following procedure applies:

(1) The certificate holder must file an application to amend its operations specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective in cases of mergers; acquisitions of airline operational assets that require an additional showing of safety (e.g., proving tests); changes in the kind of operation as defined in § 119.3; resumption of operations following a suspension of operations as a result of bankruptcy actions; or the initial introduction of aircraft not before proven for use in air carrier or commercial operator operations.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the certificate-holding district office in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the certificate-holding

district office notifies the certificate holder of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The certificate holder may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the certificate-holding district office approves the amendment, following coordination with the certificate holder regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a certificate holder seeks reconsideration of a decision from the certificate-holding district office concerning the amendment of operations specifications the following procedure applies:

(1) The certificate holder must petition for reconsideration of that decision within 30 days of the date that the certificate holder receives a notice of denial of the amendment to its operations specifications, or of the date it receives notice of an FAA-initiated amendment to its operations specifications, whichever circumstance applies.

(2) The certificate holder must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the certificate-holding district office unless the certificate holding district office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the certificate-holding district office finds that an emergency exists requiring immediate action with respect to safety in air commerce or air transportation that makes the procedures set out in this section impracticable or contrary to the public interest:

(1) The certificate-holding district office amends the operations specifications and makes the amendment effective on the day the certificate holder receives notice of it.

(2) In the notice to the certificate holder, the certificate-holding district office articulates the reasons for its finding that an emergency exists requiring immediate action with respect to safety in air transportation or air commerce or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

**§ 119.53 Wet leasing of aircraft.**

(a) Prior to conducting operations involving a wet lease, each certificate holder under this part authorized to conduct common carriage operations under this subchapter shall provide the Administrator with a copy of the wet lease to be executed which would lease the aircraft to any other person engaged in common carriage operations under this subchapter including foreign air carriers or to any other foreign person engaged in common carriage wholly outside the United States.

(b) No certificate holder under this part may wet lease from a foreign air carrier or any other foreign person or any person not authorized to engage in common carriage.

(c) Upon receiving a copy of a wet lease, the Administrator determines which party to the agreement has operational control of the aircraft and issues amendments to the operations specifications of each party to the agreement, as needed. The lessor must provide the following information to be incorporated into the operations specifications of both parties, as needed.

(1) The names of the parties to the agreement and the duration thereof.

(2) The nationality and registration markings of each aircraft involved in the agreement.

(3) The kind of operation (e.g., domestic, flag, supplemental, commuter, or on-demand).

(4) The airports or areas of operation.

(5) A statement specifying the party deemed to have operational control and the times, airports, or areas under which such operational control is exercised.

(d) In making the determination of paragraph (c) of this section, the Administrator will consider the following:

(1) Crewmembers and training.

(2) Airworthiness and performance of maintenance.

(3) Dispatch.

(4) Servicing the aircraft.

(5) Scheduling.

(6) Any other factor the Administrator considers relevant.

(e) Except as provided in paragraph (f) of this section, a certificate holder under this part operating under part 121 or 135 of this chapter may not conduct any operation for another certificate holder under this part or a foreign air carrier under part 129 of this chapter or a foreign person engaged in common carriage wholly outside the United States unless it holds applicable Department of Transportation economic authority, if required, and is authorized under its operations specifications to conduct the same kinds of operations (as defined in § 119.3). The certificate holder conducting the substitute operation must conduct that operation in accordance with the same operations authority held by the certificate holder arranging for the substitute operation. These substitute operations must be conducted between airports for which the substitute certificate holder holds authority for scheduled operations or within areas of operations for which the substitute certificate holder has authority for supplemental or on-demand operations.

(f) A certificate holder under this part may, if authorized by the Department of Transportation under § 380.3 of this title and the Administrator in the case of interstate commuter, interstate domestic, and flag operations, or the Administrator in the case of scheduled intrastate common carriage operations, conduct one or more wet-lease charter flights for passengers who are stranded because of the cancellation of their scheduled flights. The wet-lease charter flights must be conducted under the rules of part 121 or part 135 of this chapter applicable to supplemental or on-demand operations.

**§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.**

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

(b) A certificate holder that has a contract with the U.S. Department of Defense's Air Mobility Command (AMC) must submit a request for deviation authority to AMC. AMC will review the requests, then forward the carriers' consolidated requests, along with AMC's recommendations, to the FAA for review and action.

(c) The Administrator may authorize a deviation to perform operations under a U.S. military contract under the following conditions—

(1) The Department of Defense certifies to the Administrator that the operation is essential to the national defense;

(2) The Department of Defense further certifies that the certificate holder cannot perform the operation without deviation authority;

(3) The certificate holder will perform the operation under a contract or subcontract for the benefit of a U.S. armed service; and

(4) The Administrator finds that the deviation is based on grounds other than economic advantage either to the certificate holder or to the United States.

(d) In the case where the Administrator authorizes a deviation under this section, the Administrator will issue an appropriate amendment to the certificate holder's operations specifications.

(e) The Administrator may, at any time, terminate any grant of deviation authority issued under this section.

**§ 119.57 Obtaining deviation authority to perform an emergency operation.**

(a) In emergency conditions, the Administrator may authorize deviations if—

(1) Those conditions necessitate the transportation of persons or supplies for the protection of life or property, and

(2) The Administrator finds that a deviation is necessary for the expeditious conduct of the operations.

(b) When the Administrator authorizes deviations for operations under emergency conditions—

(1) The Administrator will issue an appropriate amendment to the certificate holder's operations specifications; or

(2) If the nature of the emergency does not permit timely amendment of the operations specifications—

(i) The Administrator may authorize the deviation orally; and

(ii) The certificate holder shall provide documentation describing the nature of the emergency to the certificate-holding district office within 24 hours after completing the operation.

**§ 119.58 Emergencies requiring immediate decision and action.**

(a) In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter to the extent required in the interest of safety.

(b) In an emergency situation arising during flight, that requires immediate decision and action by an aircraft dispatcher or appropriate management personnel, and that is known to him, he shall advise the pilot in command of the emergency, shall ascertain the decision of the pilot in command, and shall have the decision recorded. If he cannot communicate with the pilot, he shall declare an emergency and take any reasonable action necessary under the circumstances.

(c) Whenever a pilot in command or a dispatcher or an appropriate management person exercises emergency authority, he shall keep the appropriate ATC facility, ground radio station, and, if applicable, dispatch centers, fully informed of the progress of the flight. The person declaring the emergency shall send a written report of any deviation through the certificate holder's management to the Administrator within 10 days of the emergency action.

**§ 119.59 Conducting tests and inspections.**

(a) At any time or place, the Administrator may conduct an inspection or test to determine whether a certificate holder under this part is complying with the Federal Aviation Act of 1958, as amended, applicable regulations, the certificate, or the certificate holder's operations specifications.

(b) The certificate holder must—

(1) Make available to the Administrator at the certificate holder's principal base of operations—

(i) The certificate holder's Air Carrier Operating Certificate or the certificate holder's Operating Certificate and the certificate holder's operations specifications and

(ii) A current listing that will include the location and persons responsible for each record, document, and report required to be kept by the certificate holder under this title applicable to the operation of the certificate holder.

(2) Allow the Administrator to make any test or inspection to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the certificate holder who is responsible for maintaining the certificate holder's records must make those records available to the Administrator.

(d) The Administrator may determine a certificate holder's continued eligibility to hold its certificate and/or operations specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any certificate holder to make available to the Administrator upon request, the certificate, operations specifications, or any required record, document, or report is grounds for suspension of all or any part of the certificate holder's certificate and operations specifications.

(f) In the case of operators conducting intrastate common carriage operations, these inspections and tests include inspections and tests of financial books and records.

**§ 119.61 Duration of certificate and operations specifications.**

(a) An Air Carrier Certificate or Operating Certificate issued under this part is effective until—

(1) The certificate holder surrenders it to the Administrator or

(2) The Administrator suspends, revokes, or otherwise terminates the certificate.

(b) Operations specifications issued under this part, part 121, or part 135 of this chapter are effective unless—

(1) The Administrator suspends, revokes, or otherwise terminates the certificate;

(2) The operations specifications are amended as provided in § 119.49;

(3) The certificate holder does not conduct a kind of operation for more than thirty days and fails to follow the procedures of § 119.63 upon resuming that kind of operation; or

(4) The Administrator suspends or revokes the operations specifications for a kind of operation.

**§ 119.63 Recency of operation.**

(a) Except as provided in paragraph (b) of this section, no certificate holder may conduct a kind of operation for which it holds authority in its operations specifications unless within the preceding 30 consecutive calendar days the certificate holder conducted such kind of operation.

(b) If a certificate holder does not conduct a kind of operation for which it is authorized in its operations specifications within the preceding 30 consecutive calendar days it shall not conduct such kind of operation unless—

(1) It advises the Administrator at least 5 consecutive calendar days prior to resumption of that kind of operation and

(2) It makes itself available and accessible during the five consecutive calendar day period in the event that the FAA decides to conduct a full reexamination to determine whether the certificate holder remains properly and adequately equipped and able to conduct a safe operation.

**§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.**

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the highest degree of safety in its operations. The certificate holder must have qualified personnel serving full-time in the following or equivalent positions:

(1) Director of Safety.

(2) Director of Operations.

(3) Chief Pilot.

(4) Director of Maintenance.
(5) Chief Inspector.
(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—
(1) The kind of operation involved;
(2) The number and type of aircraft used; and
(3) The area of operations.
(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.
(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—
(1) Be qualified through training, experience, and expertise;
(2) To the extent of their responsibilities, have a full understanding of the following materials with respect to the certificate holder's operation—
(i) Aviation safety standards and safe operating practices;
(ii) Federal Aviation Regulations;
(iii) The certificate holder's operations specifications;
(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 121 of this chapter); and
(v) The manual required by § 121.133 of this chapter; and
(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.
(e) Each certificate holder must:
(1) State in the general policy provisions of the manual required by § 121.133 of this chapter, the duties, responsibilities, and authority of personnel required under paragraph (a) of this section;
(2) List in the manual the names and business addresses of the individuals assigned to those positions; and
(3) Notify the certificate-holding district office within 10 days of any change in personnel or any vacancy in any position listed.

**§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.**

(a) To serve as Director of Operations under § 119.65(a) a person must—
(1) Hold an airline transport pilot certificate;
(2) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted with large aircraft under part 121 or part 135 of this chapter; and
(3) In the case of a person becoming a Director of Operations—
(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(b) To serve as Chief Pilot under § 119.65(a) a person must hold an airline transport pilot certificate with appropriate ratings for at least one of the aircraft used in the certificate holder's operation and:
(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience, as pilot in command of a large aircraft operated under part 121 or part 135 of this chapter.
(c) To serve as Director of Maintenance under § 119.65(a) a person must—
(1) Hold a mechanic certificate with airframe and power plant ratings;
(2) Have 1 year of experience in a position responsible for returning aircraft to service;
(3) Have at least 1 year of experience in a supervisory capacity under either paragraph (c)(4)(i) or (c)(4)(ii) of this section maintaining the same category and class of airplane as the certificate holder uses; and
(4) Have 5 years experience within the past 5 years in one or a combination of the following—
(i) Maintaining large aircraft, including at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses or
(ii) Repairing aircraft in a certificated airframe repair station that is rated to maintain aircraft in the same category and class of aircraft as the certificate holder uses.
(d) To serve as Chief Inspector under § 119.65(a) a person must—
(1) Hold a mechanic certificate with both airframe and power plant ratings, and have held these ratings for at least 3 years; and
(2) Have at least 3 years of maintenance experience on different types of large aircraft with an air carrier or certificated repair station, 1 year of which must have been as maintenance inspector; and
(3) Have at least 1 year in a supervisory capacity maintaining large aircraft.
(e) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

**§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.**

(a) Each certificate holder must have sufficient qualified management and technical personnel to ensure the safety of its operations. Except for a certificate holder using only 1 pilot in its operations, the certificate holder must have qualified personnel serving in the following or equivalent positions:
(1) Director of Operations.
(2) Chief Pilot.
(3) Director of Maintenance.
(b) The Administrator may approve positions or numbers of positions other than those listed in paragraph (a) of this section for a particular operation if the certificate holder shows that it can perform the operation with the highest degree of safety under the direction of fewer or different categories of management personnel due to—
(1) The kind of operation involved;
(2) The number and type of aircraft used; and
(3) The area of operations.
(c) The title of the positions required under paragraph (a) of this section or the title and number of equivalent positions approved under paragraph (b) of this section shall be set forth in the certificate holder's operations specifications.
(d) The individuals who serve in the positions required or approved under paragraph (a) or (b) of this section and anyone in a position to exercise control over operations conducted under the operating certificate must—
(1) Be qualified through training, experience, and expertise;
(2) To the extent of their responsibilities, have a full understanding of the following material

with respect to the certificate holder's operation—

(i) Aviation safety standards and safe operating practices;

(ii) Federal Aviation Regulations;

(iii) The certificate holder's operations specifications;

(iv) All appropriate maintenance and airworthiness requirements of this chapter (e.g., parts 1, 21, 23, 25, 43, 45, 47, 65, 91, and 135 of this chapter); and

(v) The manual required by § 135.21 of this chapter; and

(3) Discharge their duties to meet applicable legal requirements and to maintain safe operations.

(e) Each certificate holder must—

(1) State in the general policy provisions of the manual required by § 135.21 of this chapter, the duties, responsibilities, and authority of personnel required or approved under paragraph (a) or (b), respectively, of this section;

(2) List in the manual the names and business addresses of the individuals assigned to those positions; and

(3) Notify the certificate-holding District Office within 10 days of any change in personnel or any vacancy in any position listed.

**§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.**

(a) To serve as Director of Operations under § 119.69(a) for a certificate holder conducting any operations for which the pilot in command is required to hold an airline transport pilot certificate a person must hold an airline transport pilot certificate and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 or part 135 of this chapter; or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(b) To serve as Director of Operations under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and either:

(1) Have at least 3 years supervisory or managerial experience within the last 6 years in a position that exercised operational control over any operations conducted under part 121 of part 135 of this chapter or

(2) In the case of a person becoming Director of Operations—

(i) For the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(ii) In the case of a person with previous experience as a Director of Operations, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(c) To serve as Chief Pilot under § 119.69(a) for a certificate holder conducting any operation for which the pilot in command is requited to hold an airline transport pilot certificate a person must hold an airline pilot certificate with appropriate ratings and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(d) To serve as Chief Pilot under § 119.69(a) for a certificate holder that only conducts operations for which the pilot in command is required to hold a commercial pilot certificate, a person must hold at least a commercial pilot certificate with an instrument rating and be qualified to serve as pilot in command in at least one aircraft used in the certificate holder's operation and:

(1) In the case of a person becoming a Chief Pilot for the first time ever, have at least 3 years experience, within the past 6 years, as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(2) In the case of a person with previous experience as a Chief Pilot, have at least 3 years experience as pilot in command of an aircraft operated under part 121 or part 135 of this chapter.

(e) To serve as Director of Maintenance under § 119.69(a) a person must hold a mechanic certificate with airframe and power plant ratings and either:

(1) Have 3 years of experience within the past 3 years maintaining aircraft as a certificated mechanic, including, at the time of appointment as Director of Maintenance, experience in maintaining the same category and class of aircraft as the certificate holder uses; or

(2) Have 3 years of experience within the past 3 years repairing aircraft in a certificated airframe repair station, including 1 year in the capacity of approving aircraft for return to service.

(f) The Manager of the Flight Standards Division in the region of the certificate-holding district office may authorize a certificate holder to employ a person who does not meet the appropriate airman, managerial, or supervisory experience requirements of this section if the Manager of the Flight Standards Regional Division finds that the person has comparable experience.

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

4. The heading for part 121 is revised to read as set forth above.

**SFAR 38–2 [Removed]**

5. Special Federal Aviation Regulation 38–2, Certification and Operating Requirements is removed.

6. Section 121.1 is revised to read as follows:

**§ 121.1 Applicability.**

This part prescribes rules governing—

(a) The domestic, flag, and supplemental operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(b) Each person employed or used by a certificate holder conducting operations under this part including maintenance, preventive maintenance, and alteration of aircraft.

(c) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58, 14 CFR part 121, and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(d) Nonstop sightseeing flights that begin and end at the same airport, and

are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 121.455 and 121.457.

(e) Each person who is on board an aircraft being operated under this part.

(f) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under part 119 of this chapter, when conducting proving tests.

7. Section 121.2 is added to read as follows:

**§ 121.2 Compliance schedule for transition to part 121.**

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10–30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after [Insert date 1 year after publication date of the final rule] unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]:

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310(c),(d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) (4 years after publication date of final rule): Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) (1 year after publication date of final rule): Section 121.311(f), Safety belts and shoulder harnesses.

(2) (4 years after publication date of final rule):

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication date of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under this part. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of this part on or before [Insert date 1 year after the publication date of the final rule]; and

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

**§§ 121.3, 121.5, 121.7, 121.9, and 121.13 [Removed]**

8. Sections 121.3, 121.5, 121.7, 121.9, and 121.13 are removed.

**§ 121.4 [Amended]**

9. Section 121.4 is amended by removing ''§ 121.3'' wherever it appears and adding in its place ''part 119 of this chapter''.

10. Section 121.15 is revised to read as follows:

**§ 121.15 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

If a certificate holder operating under this part permits any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

**Subpart B—[Removed and Reserved]**

11. Subpart B (Sections 121.21 through 121.29) is removed, and the subpart heading is reserved.

**Subpart C—[Removed and Reserved]**

12. Subpart C (§§ 121.41 through 121.61) is removed and the subpart heading is reserved.

**Subpart D—[Removed and Reserved]**

13. Subpart D (§§ 121.71 through 121.83) is removed and the subpart heading is reserved.

14. Section 121.141 is amended by revising the section heading, paragraph (a), and the introductory text of paragraph (b) to read as follows:

**§ 121.141 Airplane flight manual.**

(a) Each certificate holder shall keep a current approved airplane flight manual for each type of aircraft that it operates except for nontransport category airplanes certificated before January 1, 1965.

(b) In each airplane identified in paragraph (a) of this section, the certificate holder shall carry either the manual required by § 121.133, if it contains the information required for the applicable flight manual and this information is clearly identified as flight manual requirements, or an approved Airplane Manual. If the certificate holder elects to carry the manual required by § 121.133, he may revise the operating procedures sections and modify the presentation of performance data from the applicable flight manual if the revised operating procedures and

modified performance date presentation are—

* * * * *

15. Section 121.157 is amended by revising paragraphs (b) and (e) and by adding a new paragraph (f) to read as follows:

**§ 121.157 Aircraft certification and equipment requirements.**

* * * * *

(b) *Airplanes certificated after June 30, 1942.* Except as provided in paragraphs (c), (d), (e), and (f) of this section, no certificate holder may operate an airplane that was type certificated after June 30, 1942, unless it is certificated as a transport category airplane and meets the requirements of § 121.173(a), (b), (d), and (e).

* * * * *

(e) *Commuter category and predecessor airplanes.* Except as provided in paragraphs (c) and (d) of this section, no certificate holder may operate a nontransport category airplane type certificated after December 31, 1964, under this part, unless it meets the applicable requirements of § 121.173(a), (b), (d), and (e) and was type certificated in the commuter category or meets one of the following requirements:

(1) The airplane was type certificated in the normal category before July 1, 1970, and meets special conditions issued by the Administrator for airplanes intended for use in operations under part 135 of this chapter.

(2) The airplane was type certificated in the normal category before July 19, 1970, and meets the additional airworthiness standards in SFAR No. 23, 14 CFR part 23.

(3) The airplane was type certificated in the normal category and meets the additional airworthiness standards in appendix A of part 135 of this chapter.

(4) The airplane was type certificated in the normal category and complies with either section 1.(a) or 1.(b) of SFAR No. 41, 14 CFR part 21.

(f) *Newly type certificated airplanes.* No person may operate an airplane for which the application for a type certificate is submitted after [Insert publication date of NPRM] unless the airplane is type certificated under part 25 of this chapter.

16. Section 121.159 is revised to read as follows:

**§ 121.159 Single-engine airplanes prohibited.**

No certificate holder may operate a single-engine airplane under this part.

17. Section 121.163 is amended by revising paragraphs (a), (b), and (c) and the introductory text of paragraph (d) to read as follows:

**§ 121.163 Airplane proving tests.**

(a) *Initial airplane proving tests.* No person may operate an airplane not before proven for use in a kind of operation under this part unless an airplane of that type has had, in addition to the airplane certification tests, at least 100 hours of proving tests acceptable to the Administrator, including a representative number of flights into en route airports. The requirement for at least 100 hours of proving tests may be reduced by the Administrator if the Administrator determines that a satisfactory level of proficiency has been demonstrated to justify the reduction. At least 10 hours of proving flights must be flown at night; these tests are irreducible.

(b) *Proving tests for kinds of operations.* Unless otherwise authorized by the Administrator, for each type of airplane, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct, including a representative number of flights into en route airports.

(c) *Proving tests for materially altered airplanes.* Unless otherwise authorized by the Administrator, for each type of airplane that is materially altered in design, a certificate holder must conduct at least 50 hours of proving tests acceptable to the Administrator for each kind of operation it intends to conduct with that airplane, including a representative number of flights into en route airports.

(d) *Definition of materially altered.* For the purposes of paragraph (c) of this section, a type of airplane is considered to be materially altered in design if the alterations include—

* * * * *

18. Subpart I is amended by removing the words ''transport category'' wherever they appear.

18A. Paragraphs (a) through (e) of § 121.173 are revised to read as follows:

**§ 121.173 General.**

(a) Except as provided in paragraph (c) of this section, each certificate holder operating a reciprocating-engine-powered airplane shall comply with §§ 121.175 through 121.187.

(b) Except as provided in paragraph (c) of this section, each certificate holder operating a turbine-engine-powered airplane shall comply with the applicable provisions of §§ 121.189 through 121.197, except that when it operates a turbo-propeller-powered airplane type certificated after August 29, 1959, but previously type certificated with the same number of reciprocating engines, it may comply with §§ 121.175 through 121.187.

(c) Each certificate holder operating a large nontransport category airplane type certificated before January 1, 1965, shall comply with §§ 121.199 through 121.205 and any determination of compliance must be based only on approved performance data.

(d) The performance data in the Airplane Flight Manual applies in determining compliance with §§ 121.175 through 121.197. Where conditions are different from those on which the performance data is based, compliance is determined by interpolation or by computing the effects of changes in the specific variables if the results of the interpolation or computations are substantially as accurate as the results of direct tests.

(e) Except as provided in paragraph (c) of this section, no person may take off a reciprocating engine powered airplane at a weight that is more than the allowable weight for the runway being used (determined under the runway takeoff limitations of the transport category operating rules of 14 CFR part 121, subpart I) after taking into account the temperature operating correction factors in the applicable Airplane Flight Manual.

* * * * *

19. Section 121.175 is amended by revising the section heading and adding a new paragraph (f) to read as follows:

**§ 121.175 Airplanes: Reciprocating engine powered: Weight limitations.**

* * * * *

(f) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

20. Section 121.177 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

**§ 121.177 Airplanes: Reciprocating engine powered: Takeoff limitations.**

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

21. Section 121.179 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

**§ 121.179 Airplanes: Reciprocating engine powered: En route limitations: all engines operating.**

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

22. Section 121.181 is amended by revising the section heading and adding a new paragraph (d) to read as follows:

**§ 121.181 Airplanes: Reciprocating engine powered: En route limitations: One engine inoperative.**

* * * * *

(d) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

23. Section 121.185 is amended by revising the section heading and adding a new paragraph (c) to read as follows:

**§ 121.185 Airplanes: Reciprocating engine powered: Landing limitations: Destination airport.**

* * * * *

(c) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

24. Section 121.187 is amended by revising the section heading, designating the existing text as paragraph (a), and by adding a new paragraph (b) to read as follows:

**§ 121.187 Airplanes: Reciprocating engine powered: Landing limitations: Alternate airport.**

* * * * *

(b) This section does not apply to large nontransport category airplanes operated under § 121.173(c).

25. Section 121.211 is revised to read as follows:

**§ 121.211 Applicability.**

(a) This subpart prescribes special airworthiness requirements applicable to certificate holders as stated in paragraphs (b) through (e) of this section.

(b) Except as provided in paragraph (d) of this section, each airplane type certificated under Aero Bulletin 7A or part 4 of the Civil Air Regulations in effect before November 1, 1946 must meet the special airworthiness requirements in §§ 121.215 through 121.283.

(c) Each certificate holder must comply with the requirements of §§ 121.285 through 121.291.

(d) If the Administrator determines that, for a particular model of airplane used in cargo service, literal compliance with any requirement under paragraph (b) of this section would be extremely difficult and that compliance would not contribute materially to the objective sought, he may require compliance only with those requirements that are necessary to accomplish the basic objectives of this part.

(e) No person may operate under this part a nontransport category airplane type certificated after December 31, 1964 unless the airplane meets the special airworthiness requirements in § 121.293.

**§ 121.213 [Removed and Reserved]**

26. Section 121.213 is removed and reserved.

27. Section 121.285 is amended by revising paragraph (a) and by adding a new paragraph (d) to read as follows:

**§ 121.285 Carriage of cargo in passenger cargo compartments.**

(a) Except as provided in paragraph (b), (c), or (d) or this section, no certificate holder may carry cargo in the passenger compartment of an airplane.

* * * * *

(d) Cargo may be carried anywhere in the passenger compartment of a nontransport category airplane type certificated after December 31, 1964, in an approved cargo rack, bin, or compartment installed in or on the airplane or if it is carried in accordance with paragraphs (c)(1) through (c)(5) of this section.

**§ 121.289 [Amended]**

28. Section 121.289(a) introductory text is amended by removing the word ''large.''

29. Section 121.291 is amended by revising the introductory text of paragraph (b) and the introductory text of paragraph (c) to read as follows:

**§ 121.291 Demonstration of emergency evacuation procedures.**

* * * * *

(b) Each certificate holder conducting operations with airplanes with a seating capacity of more than 44 passengers must conduct a partial demonstration of emergency evacuation procedures in accordance with paragraph (c) of this section upon:

* * * * *

(c) In conducting the partial demonstration required by paragraph (b) of this section, each certificate holder must:

* * * * *

30. A new § 121.293 is added to read as follows:

**§ 121.293 Special airworthiness requirements for nontransport category airplanes type certificated after December 31, 1964.**

(a) No person may operate a nontransport category airplane type certificated after December 31, 1964, unless the airplane meets the requirements for ditching emergency exits in § 23.807(e) of this chapter.

(b) No certificate holder may operate a nontransport category airplane manufactured after [Insert date 4 years after publication date of final rule] unless the airplane contains a takeoff warning system that meets the requirements of § 25.703. However, the takeoff warning system does not have to cover any device for which it can be demonstrated that takeoff with that device in the most adverse position would not create a hazardous condition.

**§ 121.308 [Amended]**

31. Section 121.308 is amended by removing the words ''transport category'' in paragraphs (a) and (b).

32. Section 121.309 is amended by revising paragraphs (c)(7), (d)(1), and (e) to read as follows:

**§ 121.309 Emergency equipment.**

* * * * *

(c) * * *

(7) At least two of the required hand fire extinguisher installed in passenger-carrying airplanes must contain Halon 1211 (bromochlorofluoromethane) or equivalent as the extinguishing agent. At least one hand fire extinguisher in the passenger compartment must contain Halon 1211 or equivalent.

* * * * *

(d) *First aid and emergency medical equipment and protective gloves.* (1) For treatment of injuries or medical emergencies that might occur during flight time or in minor accidents each passenger-carrying airplane must have the following equipment that meets the specifications and requirements of appendix A of this part:

(i) Approved first aid kits and

(ii) For airplanes requiring a flight attendant, an emergency medical kit.

* * * * *

(e) *Crash ax.* Each airplane with a separate flight deck and lockable door must be equipped with a crash ax.

* * * * *

33. Section 121.310 is amended by revising paragraph (d)(2)(i) and paragraph (f) introductory text to read as follows:

**§ 121.310 Additional emergency equipment.**

* * * * *

(d) * * *

(2) * * *

(i) Be operable manually both from the flight crew station and, for airplanes on which a flight attendant is required, from a point in the passenger compartment that is readily accessible to a normal flight attendant seat;

(f) *Emergency exit access.* Except for nontransport category airplanes certificated after December 31, 1964, access to emergency exits must be provided as follows for each passenger-carrying airplane:

* * * * *

34. Section 121.312 is amended by adding the words ''transport category'' before the word ''airplanes'' in

paragraph (b) and by adding a new paragraph (c) to read as follows:

**§ 121.312 Materials for compartment interiors.**

* * * * *

(c) For nontransport category airplanes type certificated after December 31, 1964, after [Insert date 2 years after effective date of final rule] or after the seat cushion is replaced, whichever occurs first, each seat cushion, except those on flight crewmember seats, in any compartment occupied by crew or passengers must comply with the requirements pertaining to fire protection of seat cushions in § 25.853(c) of this chapter, effective November 26, 1984, and appendix F to part 25 of this chapter, effective November 26, 1984. The Administrator may grant a deviation from this requirement for up to an additional 2 years if he finds that it is justified by an integral-seat cushion configuration.

35. Section 121.313(f) is revised to read as follows:

**§ 121.313 Miscellaneous equipment.**

* * * * *

(f) A door between the passenger and pilot compartments, with a locking means to prevent passengers from opening it without the pilot's permission, except that nontransport category airplanes certificated after December 31, 1964, without a door are not required to comply with this paragraph.

* * * * *

36. Section 121.337 is amended by removing the words ''transport category'' from the introductory text in paragraph (b) and by revising paragraph (b)(9)(iv) to read as follows:

**§ 121.337 Protective breathing equipment.**

* * * * *

(b) * * *

(9) * * *

(iv) Except airplanes having a passenger-seating configuration of fewer than 20 passenger seats, excluding any required crewmember seat, and a payload capacity of 7,500 pounds or less, in each passenger compartment, one located within 3 feet of each hand fire extinguisher required by § 121.309, except that the Administrator may authorize a deviation allowing locations of PBE more than 3 feet from required hand fire extinguisher locations if special circumstances exist that make compliance impractical and the proposed deviation provides an equivalent level of safety.

* * * * *

37. Section 121.340 is amended by revising paragraph (a) to read as follows:

**§ 121.340 Emergency flotation means.**

(a) Except as provided in paragraph (b) of this section, no person may operate an airplane in any overwater operation unless it is equipped with life preservers in accordance with § 121.339(a)(1) or with an approved flotation means for each occupant. This means must be within easy reach of each seated occupant and must be readily removable from the airplane.

* * * * *

**§ 121.342 [Amended]**

38. Section 121.342 is amended by adding the words ''or a nontransport category airplane type certificated after December 31, 1964, ''after the word ''airplane'' in paragraph (a).

**§ 121.343 [Amended]**

39. Section 121.343 is amended by revising the section heading to read ''Flight recorders: Airplanes with a payload capacity of more than 7,500 pounds.''

40. Section 121.344 is added to read as follows:

**§ 121.344 Flight recorders: Airplanes with a payload capacity of 7,500 pounds or less.**

No person may operate an airplane with a payload capacity of 7,500 pounds or less unless it meets the requirements for flight recorders in § 135.152 of this chapter.

41. Section 121.356 is amended by revising the introductory text of paragraph (c) to read as follows:

**§ 121.356 Traffic Alert and Collision Avoidance System.**

* * * * *

(c) The appropriate manuals required by § 121.131 shall contain the following information on the TCAS II System or TCAS I System, as appropriate, as required by this section:

* * * * *

41. Section 121.357 is amended by revising paragraph (a) and introductory text of paragraph (c) to read as follows:

**§ 121.357 Airborne weather radar equipment requirements.**

(a) No person may operate any airplane (except C–46 type airplanes) unless approved airborne weather radar equipment has been installed in the airplane.

* * * * *

(c) Each person operating an airplane required to have approved airborne weather radar equipment installed shall, when using it under this part, operate it in accordance with the following:

* * * * *

42. Section 121.359 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 121.359 Cockpit voice recorders.**

(a) No certificate holder may operate a turbine-powered airplane or a large pressurized airplane with four reciprocating engines unless an approved cockpit voice recorder is installed in that airplane and is operated continuously from the start of the use of the checklist (before starting engines for the purpose of flight) to completion of the final checklist at the termination of the flight.

(b) The cockpit voice recorder required by this section for a turbine-powered airplane having a passenger seating configuration of 10 to 19 seats and a maximum payload capacity of 7,500 pounds or less must comply with the following application standards: § 23.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g); or § 25.1457(a)(1) and (2), (b), (c), (d), (e), (f), and (g) of this chapter, as applicable.

(c) Except as provided in paragraph (b), the cockpit voice recorder required by this section must meet the following application standards:

(1) The requirements of § 25.1457 of this chapter.

(2) Each recorder container must—

(i) Be either bright orange or bright yellow;

(ii) Have reflective tape affixed to the external surface to facilitate its location under water; and

(iii) Have an approved underwater locating device on or adjacent to the container which is secured in such a manner that they are not likely to be separated during crash impact, unless the cockpit voice recorder, and the flight recorder required by § 121.343, are installed adjacent to each other in such a manner that they are not likely to be separated during crash impact.

* * * * *

43. Section 121.380 is amended by revising paragraphs (a) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(v), (a)(2)(vi), (b)(1), and (b)(2) to read as follows:

**§ 121.380 Maintenance recording requirements.**

(a) Each certificate holder shall keep (using the system specified in the manual required in § 121.369) the following records for the periods specified in paragraph (b) of this section:

* * * * *

(2) * * *

(i) The total time in service of the airframe, engine, and propeller.

(ii) The current status of life-limited parts of each airframe, engine, propeller, and appliance.

* * * * *

(v) The current status of applicable airworthiness directives, including the date and methods of compliance, and, if the airworthiness directive involves recurring action, the time and date when the next action is required.

(vi) A list of current major alterations to each airframe, engine, propeller, and appliance.

(b) * * *

(1) Except for the records of the last complete overhaul of each airframe, engine, propeller, and appliance, the records specified in paragraph (a)(1) of this section shall be retained until the work is repeated or superseded by other work or for one year after the work is performed.

(2) The records of the last complete overhaul of each airframe, engine, propeller, and appliance shall be retained until the work is superseded by work of equivalent scope and detail.

* * * * *

44. Section 121.391 is amended by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(3) and (a)(4), respectively; by revising paragraphs (a) introductory text and (a)(1); by adding a new paragraph (a)(2); and by removing paragraph (e) to read as follows:

**§ 121.391 Flight attendants.**

(a) Each certificate holder shall provide at least the following flight attendants on each passenger-carrying airplane used:

(1) For airplanes having a maximum payload capacity of more than 7,500 pounds and having a seating capacity of more than 9 but less than 51 passengers—one flight attendant.

(2) For airplanes having a maximum payload capacity of 7,500 pounds or less and having a seating capacity of more than 19 but less than 51 passengers—one flight attendant.

* * * * *

45. Section 121.393 is added to read as follows:

**§ 121.393 Crewmember requirements at stops where passengers remain on board.**

At stops where passengers remain on board, the certificate holder must meet the following requirements:

(a) Certificate holders who are not required to use a flight attendant under § 121.391(a) must have on board a person who is qualified in the emergency evacuation procedures for that aircraft as required in § 121.417. That person must be identified to the passengers.

(b) If flight attendants are required, but the number of flight attendants remaining on board is fewer than required by § 121.391(a), the certificate holder must meet the following requirements:

(1) The certificate holder must ensure that the airplane's engines are shut down and at least one floor-level exit remains open to provide for passenger deplaning.

(2) The number of flight attendants on board must be at least half the number required by § 121.391(a), rounded down to the next lower number in the case of fractions, but never fewer than one.

(3) The certificate holder may substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in § 121.417, if these persons are identified to the passengers.

(c) If only one flight attendant or other qualified person is on board during a stop, that flight attendant or other qualified person shall be located in accordance with the certificate holder's FAA-approved operating procedures. If more than one flight attendant or other qualified person is on board, the flight attendants or other qualified persons shall be spaced throughout the cabin to provide the most effective assistance for the evacuation in case of an emergency.

**§ 121.435 [Removed]**

46. Section 121.435 is removed.

47. Section 121.463 is amended by revising paragraphs (a)(2) and (c) to read as follows:

**§ 121.463 Aircraft dispatcher qualifications.**

(a) * * *

(2) Operating familiarization consisting of at least 5 hours observing operations under this part from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. A person may serve as an aircraft dispatcher without meeting the requirement of this paragraph (a) for 90 days after initial introduction of the airplane into operations under this part.

* * * * *

(c) No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as an aircraft dispatcher unless within the preceding 12 calendar months the aircraft dispatcher has satisfactorily completed operating familiarization consisting of at least 5 hours observing operations under this part, in one of the types of airplanes in each group to be dispatched. This observation shall be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. The requirement of this paragraph (a) may be reduced to a minimum of 2½ hours by the substitution of one additional takeoff and landing for an hour of flight. The requirement of this paragraph (a) may be satisfied by observation of 5 hours of simulator training for each airplane group in one of the simulators approved under § 121.407 for the group. However, if the requirement of this paragraph (a) is met by the use of a simulator, no reduction in hours is permitted.

* * * * *

**§§ 121.557 and 121.559 [Removed]**

48. Sections 121.557 and 121.559 are removed.

49. Section 121.571 is amended by adding a new paragraph (a)(1)(v) and by revising the introductory text of paragraph (a)(3) to read as follows:

**§ 121.571 Briefing passengers before take-off.**

(a) * * *

(1) * * *

(v) On operations that do not use a flight attendant, the following additional information:

(A) The placement of seat backs in an upright position before takeoff and landing.

(B) Location of survival equipment.

(C) If the flight involves operations above 12,000 MSL, the normal and emergency use of oxygen.

(D) Location and operation of fire extinguisher.

* * * * *

(3) Except as provided in paragraph (a)(4) of this section, before each takeoff a required crewmember assigned to the flight shall conduct an individual briefing of each person who may need the assistance of another person to move expeditiously to an exit in the event of an emergency. In the briefing the required crewmember shall—

* * * * *

50. Section 121.578(b) introductory text is revised to read as follows:

**§ 121.578 Cabin ozone concentration.**

* * * * *

(b) Except as provided in paragraphs (d) and (e) of this section, no certificate holder may operate an airplane above the following flight levels unless it is successfully demonstrated to the Administrator that the concentration of ozone inside the cabin will not exceed—

* * * * *

51. Section 121.581 is amended by revising paragraph (a) and by adding a new paragraph (c) to read as follows:

**§ 121.581 Forward observer's seat: En route inspections.**

(a) Except as provided in paragraph (c) of this section, each certificate holder shall make available a seat on the flight deck of each airplane, used by it in air commerce, for occupancy by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

* * * * *

(c) For any airplane that does not have an observer seat on the flight deck, the certificate holder must provide a forward passenger seat with headset or speaker for occupancy by the Administrator while conducting en route inspections.

**§ 121.583 [Amended]**

52. Section 121.583(a) is amended by removing the reference to ''*,*121.161,.''

53. Section 121.590 is amended by revising paragraph (a) and (b) to read as follows: paragraph (b) to read as follows:

**§ 121.590 Use of certificated land airports.**

(a) Except as provided in paragraph (b) of this section or unless otherwise authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an aircraft into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination an airport that is not certificated under part 139 of this chapter.

(b) Certificate holders conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate those airplanes into airports not certificated under part 139 of this chapter if the following conditions are met:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be approved by the Administrator.

54. Section 121.703 is amended by revising paragraphs (a)(12) and (f) to read as follows:

**§ 121.703 Mechanical reliability reports.**

(a) * * *

(12) An unwanted landing gear extension or retraction, or an unwanted opening or closing of landing gear doors during flight;

* * * * *

(f) A certificate holder that is also the holder of a Type Certificate (including a Supplemental Type Certificate), a Parts Manufacturer Approval, or a Technical Standard Order Authorization, or that is the licensee of a type certificate holder, need not report a failure, malfunction, or defect under this section if the failure, malfunction, or defect has been reported by it under § 21.3 of this chapter or under the accident reporting provisions of 14 CFR part 830.

* * * * *

55. Section 121.713 is revised to read as follows:

**§ 121.713 Retention of contracts and amendments: Commercial operatorsho conduct intrastate operations for compensation or hire.**

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least 1 year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

55A. The title for 14 CFR part 125 is revised to read as follows:

## PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

56. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

57. Paragraph (b)(4) of § 125.1 is revised to read as follows:

**§ 125.1 Applicability.**

* * * * *

(b) * * *

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of part 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in common carriage solely outside the United States under part 91 of this chapter; or

* * * * *

## PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

58. Part 127 is removed.

## PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

59. The authority citation for part 135 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

60. The heading for part 135 is revised to read as set forth above.

61. Section 135.1 is revised to read as follows:

**§ 135.1 Applicability.**

(a) This part prescribes rules governing—

(1) The commuter or on-demand operations of each person who is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.

(2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, these operations must comply only with §§ 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

62. Section 135.2 is revised to read as follows:

**§ 135.2 Compliance schedule for transition to part 121.**

(a) *Applicability.* This section applies to the following:

(1) Each certificate holder that conducts scheduled passenger-carrying operations with airplanes having a passenger seating configuration of 10 to 30 seats and each certificate holder that conducts scheduled passenger-carrying operations in turbojet engine powered airplanes having a passenger seating configuration of 30 seats or fewer that before [Insert date 30 days after publication date of final rule] was issued an air carrier certificate or operating certificate and operations specifications under the certification requirements of part 135 of this chapter or under SFAR 38–2.

(2) Each person who after [Insert date 30 days after publication date of final rule] applies for or obtains an air carrier certificate or operating certificate or operations specifications to conduct operations described in paragraph (a) of this section.

(b) *Obtaining operations specifications.* Each person covered by paragraph (a)(1) of this section shall before [Insert date 1 year after publication date of final rule] obtain operations specifications to conduct its scheduled operations under part 121 of this chapter.

(c) *Regular or accelerated compliance.* Except as provided in paragraphs (d) and (e) of this section, each certificate holder covered by paragraph (a) of this section shall comply with each applicable requirement of part 121 of this chapter as of [Insert date 1 year after publication date of final rule] or the date on which the certificate holder is issued 14 CFR part 121 operations specifications, whichever occurs first.

(d) *Delayed retrofit requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [2 years after publication date of final rule]

(i) Section 121.289, Landing gear aural warning.

(ii) Section 121.293(a), Ditching emergency exits.

(iii) Section 121.308, Lavatory fire protection.

(iv) Section 121.310 (c), (d), (e), and (h), Floor proximity lighting; emergency exit handle illumination, and interior and exterior emergency lighting, respectively.

(v) Section 121.312(c), Passenger seat cushion flammability.

(vi) Section 121.337(b), Protective breathing equipment.

(vii) Section 121.340, Floatation cushions.

(2) [4 years after publication date of final rule]: Section 121.342, pitot heat indication system.

(e) *New manufacture requirements.* No certificate holder that is covered by paragraph (a) of this section may operate an airplane in 14 CFR part 121 operations that is and manufactured on or after the date stated on the certificate unless that airplane meets the stated requirements:

(1) [1 year after publication date of final rule]: Section 121.311(f), Safety belts and shoulder harnesses.

(2) [4 years after publication date of final rule]:

(i) Section 121.293(b), Takeoff warning system.

(ii) Section 121.312(a), Interior materials flammability.

(iii) Section 121.314, Cargo and baggage compartments.

(f) *New type certification requirements.* No person may operate an airplane for which the application for a type certificate was filed after [Insert date of publication of NPRM] in 14 CFR part 121 operations unless that airplane is type certificated under part 25 of this chapter.

(g) *Transition plan.* Before [Insert date 60 days after publication of final rule] each certificate holder described in paragraph (a)(1) of this section must submit to the FAA a transition plan (containing a calendar of events) for moving from conducting its scheduled operations under the commuter requirements of part 135 of this chapter to the requirements for domestic or flag operations under part 121 of this chapter. Each transition plan must contain details on the following:

(1) Plans for obtaining new operations specifications authorizing domestic or flag operations;

(2) Plans for being in compliance with the applicable requirements of part 121 of this chapter on or before [Insert date 1 year after the publication date of the final rule].

(3) Plans for complying with the compliance date schedules contained in paragraphs (d) and (e) of this section.

**§§ 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 [Removed]**

63. Sections 135.5, 135.9, 135.11, 135.13, 135.15, 135.17, and 135.19 are removed.

**§ 135.7 [Amended]**

64. Section 135.7 is amended by removing ''§ 135.5'' wherever it appears and adding in its place ''part 119 of this chapter''.

**§ 135.21 [Amended]**

65. Section 135.21 (b) and (f) are amended by revising ''principal operations base'' to read ''principal base of operations.''

**§ 135.23 [Amended]**

66. Section 135.23(a) is amended by removing the reference ''§ 135.37(a)'' and adding in its place ''§ 119.69(a) of this chapter''.

**§ 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 [Removed]**

67. Section 135.27, 135.29, 135.31, 135.33, 135.35, 135.37, and 135.39 are removed.

68. Section 135.41 is revised to read as follows:

**§ 135.41 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.**

If the holder of a certificate operating under this part allows any aircraft owned or leased by that holder to be engaged in any operation that the certificate holder knows to be in violation of § 91.19(a) of this chapter, that operation is a basis for suspending or revoking the certificate.

**§ 135.43 [Amended]**

69. Section 135.43 is amended by:

(A) Revising ''FAA Flight Standards District Office charged with the overall inspection'' in paragraph (b) to read '' certificate-holding district office.''

(B) Revising ''Flight Standards District Office'' in paragraph (c) to read ''certificate-holding district office.''

70. Section 135.64 is added to read as follows:

**§ 135.64 Retention of contracts and amendments: Commercial operators who conduct intrastate operations for compensation or hire.**

(a) Each commercial operator who conducts intrastate operations for compensation or hire shall keep a copy of each written contract under which it provides services as a commercial operator for a period of at least one year after the date of execution of the contract. In the case of an oral contract, it shall keep a memorandum stating its elements, and of any amendments to it, for a period of at least one year after the execution of that contract or change.

(b) Each commercial operator who conducts intrastate operations for compensation or hire shall submit a financial report for the first 6 months of each fiscal year and another financial report for each complete fiscal year. If that person's operating certificate is suspended for more than 29 days, that person shall submit a financial report as of the last day of the month in which the suspension is terminated. The report required to be submitted by this section shall be submitted within 60 days of the last day of the period covered by the report and must include—

(1) A balance sheet that shows assets, liabilities, and net worth on the last day of the reporting period;

(2) The information required by § 119.35(h)(2), (h)(7), and (h)(8) of this chapter;

(3) An itemization of claims in litigation against the applicant, if any, as of the last day of the period covered by the report;

(4) A profit and loss statement with the separation of items relating to the applicant's commercial operator activities from his other business activities, if any; and

(5) A list of each contract that gave rise to operating income on the profit and loss statement, including the names and addresses of the contracting parties and the nature, scope, date, and duration of each contract.

**§ 135.105 [Amended]**

71. Section 135.105(a) is amended by revising the phrase ''by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

**§ 135.145 [Amended]**

72. Section 135.145 is amended by revising the words ''certificate holder or applicant for an air carrier or operating certificate'' in paragraphs (a) and (b) to read ''certificate holder'', wherever they appear.

**§ 135.165 [Amended]**

73. Section 135.165(a) is amended by revising the phrase ''carrying passengers as a *Commuter Air Carrier*'' as defined in part 298 of this title,'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

74. Section 135.243(a) is revised to read as follows:

**§ 135.243 Pilot in command qualifications.**

(a) No certificate holder may use a person, nor may any person serve, as pilot in command in passenger-carrying operations—

(1) Of a turbojet airplane, of an airplane having a passenger-seating configuration, excluding any pilot seat, of 10 seats or more, or of a multiengine airplane in a commuter operation as defined in part 119 of this chapter, unless that person holds an airline transport pilot certificate with appropriate category and class ratings and, if required, an appropriate type rating for that airplane.

(2) Of a helicopter in a scheduled interstate air transportation operation by an air carrier within the 48 contiguous states unless that person holds an airline transport pilot certificate, appropriate type ratings, and an instrument rating.

* * * * *

**§ 135.244 [Amended]**

75. Section 135.244(a) is amended by revising the phrase ''by a Commuter Air Carrier (as defined in § 298.2 of this title) in passenger-carrying operations'' to read ''in a commuter operation, as defined in part 119 of this chapter.''

76. Section 135.248 is added to read as follows:

**§ 135.248 Use of maintenance personnel.**

Notwithstanding the provisions of §§ 135.249, 135.251, 135.253, and 135.255, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

77. Section 135.352 is added to read as follows:

**§ 135.352 Use of maintenance personnel.**

Notwithstanding the provisions of § 135.353, an operator who does not hold an air carrier or operating certificate is permitted to use a person, who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to the requirements of an FAA-approved anti-drug program, to perform—

(a) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would be required to transport the aircraft more than 50 nautical miles further than the closest available repair point from the operator's principal place of operations to obtain these services; or

(b) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to the requirements of appendix I of part 121 of this chapter can perform the emergency repairs.

Issued in Washington, DC, on March 16, 1995.

**Anthony J. Broderick,**

*Associate Administrator for Regulation and Certification.*

[FR Doc. 95–7488 Filed 3–24–95; 8:45 am]

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## Part III

# Environmental Protection Agency

**40 CFR Parts 704, 720, 721, and 723**
**Revisions of Premanufacture Notification Regulations; Expedited Process to Issue Significant New Use Rules for Selected New Chemical Substances; Revisions of Exemptions for Polymers; and Revision of Exemptions for Chemical Substances Manufactured in Small Quantities-Low Release and Exposure Exemptions; Final Rules**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 704, 720 and 721**

**[OPPTS–50593B; FRL–4921–8]**

**RIN 2070–AC14**

## Premanufacture Notification; Revisions of Premanufacture Notification Regulations; Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** Pursuant to section 5 of the Toxic Substances Control Act (TSCA), EPA is promulgating procedural amendments to the premanufacture notification (PMN) rule to incorporate a number of regulatory initiatives designed to streamline and reduce the administrative costs and burdens of the section 5 new chemicals program. These actions will allow EPA to concentrate its limited resources on identifying and controlling those new chemical substances most likely to present an unreasonable risk of injury to human health and the environment.

**DATES:** This rule will become effective May 30, 1995. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1:00 p.m. eastern savings time on April 12, 1995.

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

**SUPPLEMENTARY INFORMATION:** EPA published its final PMN rule (40 CFR part 720) on May 13, 1983 (48 FR 21722) and subsequently amended certain parts of the rule on September 13, 1983 (48 FR 41132) and April 22, 1986 (51 FR 15096). On February 8, 1993, EPA proposed additional amendments to the PMN rule (58 FR 7661). Please consult those documents for further information on the PMN rule and the proposed amendments. The docket control number for this action is OPPTS–50593B.

### I. Background

*A. Statutory Authority*

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. For the purposes of TSCA, a new chemical substance is one that is not listed in the Master File of the TSCA Chemical Substance Inventory (''the Inventory'') compiled under TSCA section 8(b), which consists of substances originally reported under the Inventory reporting regulations (40 CFR part 710) and substances added via notices of commencement of manufacture or import (NOCs)(40 CFR 720.102) from submitters of PMNs.

*B. History*

Since 1979, EPA has reviewed over 25,000 section 5 notices for new chemical substances. During the intervening years, EPA has implemented a number of initiatives which have enabled the Agency to review a growing number of new chemical substances more efficiently. As discussed in the February 8, 1993 proposed rule (58 FR 7661), EPA is amending the PMN rule at 40 CFR part 720 to further reduce the costs of administering the Agency's new chemicals program and to implement other efficiencies for EPA and submitters. Please consult the proposed rule for a more detailed discussion of the objectives and rationale for these amendments.

### II. Discussion of Final Amendments and Response to Comments

The final rule adopts the proposed amendments with minor revisions. The Agency reviewed and considered all comments received on the proposed amendments. A complete copy of all comments received is available in the public docket for this rulemaking, along with EPA's response to comments not addressed in this document. A discussion of the final amendments including a summary of significant comments and the Agency's response follows:

*A. Correct Chemical Identity*

EPA is amending §720.45(a) of the PMN rule to require that submitters of section 5 notices provide the currently correct Chemical Abstracts (CA) Index Name or CA Preferred Name for each chemical substance included in the notice (''reported substance'') that is consistent with TSCA Inventory listings for similar substances. Persons who request a search of the confidential Inventory by demonstrating a *bona fide* intent to manufacture or import a chemical substance for commercial purposes (''*bona fide*'') will also be required to provide CA nomenclature and chemical identity information in accordance with amended §720.25, as discussed later in this document. The rule also requires that a currently valid Chemical Abstracts Service (CAS) Registry Number (CASRN) consistent with the CA name be reported for the substance if a CASRN already exists for that substance. Until now, the PMN rule has indicated that CA nomenclature is the preferred, but not required chemical nomenclature system for PMN reporting. Therefore, submitters were able in the past to identify the PMN substance using alternative nomenclature. Having the currently correct CA identification for a substance is important to EPA because the reporting of incorrect, inconsistent, ambiguous, or obsolete chemical names, molecular formulae, or chemical structure information, or names that are not CA Index or CA Preferred Names, causes extra resources to be spent by EPA in establishing the best descriptions for substances under TSCA for searching the Inventory.

Although a CASRN has not been routinely required for a reported substance if a CASRN is not already available and the amendment only requires that CASRNs be reported for substances that already have them, EPA strongly recommends that submitters provide CASRNs for all reported substances, especially when the chemical identity is not being claimed as confidential business information (CBI). The fact that a CASRN exists does not prohibit a submitter from claiming this information as confidential. Having more substances reported with CASRNs will save EPA resources involved with chemical review and Inventory searching.

Submitters must provide a CA Index Name or CA Preferred Name that is consistent with the application of the Ninth Collective Index (9CI) of CA nomenclature rules and conventions. (This definitive guide to CA nomenclature has been used since 1972.) Whether to report a CA Index Name or Preferred Name for a substance depends on whether the chemical identity of the substance is well-defined or poorly defined.

For well-defined substances appropriately named using CA Index nomenclature, the specific chemical name chosen as most accurately describing the substance should be based on all information that the submitter can reasonably ascertain about its chemical structure, including, where applicable, the degree of structural specificity of the substance (e.g., whether specific isomers are intended to be manufactured in the reaction that produces the substance). For poorly defined substances properly named using CA Preferred nomenclature, the specific name of choice should be based on the

submitter's knowledge of the identities of the chemical precursors used, the sources of the reactants (synthetic, isolated by processing from certain naturally occurring materials, etc.), the nature of the reaction, and the types of chemical substances constituting the product combination, etc. For naming any kind of substance, the submitter's knowledge of impurities or byproducts is also a consideration.

When more than one substance results from a reaction, one should determine whether the product combination can be viewed for TSCA purposes as a mixture of separately reportable substances. For example, when the intended product combination is known to always be completely composed of a specific number of identified substances that do not react with one another, the combination can be represented as a mixture of individual components. If this is not the case, a single chemical name must be used to collectively describe the product combination as one substance. Where the chemical components can be represented as a mixture, they may be reported in a single PMN as long as the components are not intended to be separated. Otherwise, multiple PMNs or a consolidated PMN (requiring pre-approval by EPA) must be submitted.

The PMN rule retains all of the other chemical identity information required at §720.45(a), including molecular formula and chemical structure information. However, for substances not able to be characterized by a single chemical structure, the amendments require the submitted representative or partial structural diagram to be as complete as known to or reasonably ascertainable by the submitter. Failure to fully comply with the chemical identification elements of this requirement will result in the notice being declared incomplete by EPA pursuant to §720.65(c)(1). Such incomplete notices will not be processed or reviewed by the Agency until the chemical identification requirement is satisfied.

Concerning the degree of chemical structure information that can be reasonably ascertained for a given substance, submitters should understand that, for TSCA Inventory purposes, all substances are categorized by EPA into two groups according to the degree of certainty about the chemical structure of a substance: Class 1 and Class 2. Class 1 substances are those of precisely known chemical composition for which a single, complete structural diagram can be drawn. Class 2 substances are those having chemical compositions not completely definite or known; therefore, they cannot be characterized by definite, complete chemical structure diagrams. This rule amendment requires complete structural diagrams to be provided for Class 1 substances; for Class 2 substances, partial structure diagrams are required that are as complete as can be reasonably ascertained from the Class 2 chemical identity.

All of the chemical identification requirements described above should be satisfied if the submitter uses the CAS Registry Services Inventory Expert Service, which is a special extension of CAS for identifying substances to be submitted under TSCA. Submitters may also choose to use the services of another chemical information service or consultant that the submitter considers capable of generating correct CA names, chemical structure diagrams or molecular formulae where appropriate, and obtaining existing CASRNs. Alternatively, the submitter can search publicly available databases to retrieve this information, if available, or attempt to generate a name without assistance from another person or organization, if the submitter has sufficient knowledge about the Ninth Collective (9CI) Index of CA nomenclature rules and conventions and about how similar substances are named for the Inventory.

Information describing CA nomenclature rules and conventions can be obtained from CAS. In addition, the Agency is preparing a series of Inventory nomenclature papers that are intended to generate better understanding of how various classes of substances or types of complex product combinations are identified for TSCA purposes. The Inventory papers provide informal technical guidance that is intended solely to illustrate how various types of substances are represented on the TSCA Inventory based on the information provided by the submitters. The papers are not intended to be used for identifying substances for reporting purposes or for determining the need to report. Generally, EPA has attempted to maintain a consistent Inventory by closely following the guidance contained in the papers. However, EPA cannot guarantee that the guidance discussed in these papers has been applied to all substances listed on the Inventory. The initial Inventory reporting utilized four types of reporting forms with very different format and data requirements, making it difficult to ensure complete consistency. The Inventory papers will be available from the TSCA Assistance Information Service at (202) 554–1404; TTD (202) 554–0551; on line service modem (202) 554–5603.

An information sheet on the CAS Registry Services is also available from the TSCA Assistance Information Service. Printed copies of the non-confidential Inventory can be purchased from the Government Printing Office; computer tapes, CD ROM, and PC diskettes, (up-dated semi-annually) containing this Inventory information can be purchased from the National Technical Information Service (NTIS).

Regardless of how submitters determine correct CA chemical nomenclature, submitters should provide the party generating the CA nomenclature with the same chemical identity information that the submitter would have to send to EPA if reporting the substance in a PMN: the same types of information, levels of detail, degrees of specificity, byproduct and impurity information, etc. The party assigning a chemical identity should ensure that the name choice reflects the current CA nomenclature rules and conventions, as well as how similar substances are named for the Inventory, or the chemical name will be incorrect and the notice may be declared incomplete by the Agency.

The final rule at §720.45(a)(3)(i) and (ii) sets forth the required mechanism for obtaining CA nomenclature directly from CAS or alternative sources, as follows:

*Method 1.* A submitter using this method obtains the correct chemical identification directly from the CAS Registry Services Inventory Expert Service prior to submitting a notice to EPA. CAS will provide such services pursuant to arrangements between CAS and persons informing CAS that their substances will be reported to EPA in a notice. Submitters should call or write to the CAS Registry Services for information. Submitters must provide EPA with a copy of the chemical identification report obtained from CAS along with the completed notice, to verify that they obtained the information directly from CAS.

EPA believes that most submitters will find it advantageous to utilize the services of CAS to meet this requirement. As discussed in the proposed rule, due to CAS' authoritative position in the field of chemical identification and its familiarity with TSCA Inventory and nomenclature policies, EPA believes that chemical names and other chemical identity information assigned by CAS according to this method should be acceptable to the Agency. For these reasons, EPA strongly recommends that submitters use the services of CAS to satisfy the amended provisions.

Submitters should note, however, that if EPA disagrees with the identification assigned by CAS to a given substance, the Agency reserves the final authority to designate how a reported substance should be named and represented for the Inventory. This will not delay processing of the PMN by EPA. In the event EPA does not agree with a chemical name, CASRN, chemical structure or molecular formula provided to a submitter by CAS for TSCA purposes according to Method 1, EPA will work with CAS to either modify the submitted chemical identity when necessary or confirm that CAS' identification is most appropriate, to ensure that a correct TSCA description is assigned. Using Method 1, there will be no delay in EPA review or additional cost to the submitter resulting from an identification error by CAS or an identity verification request by EPA provided that the submitter has given complete chemical information to CAS that is identical to the chemical identity information contained in the section 5 notice to EPA. EPA will assume responsibility for resolving chemical identity problems occurring when Method 1 is used. However, if EPA determines that the chemical identity information submitted to EPA is not identical to that provided CAS, the notice may be deemed incomplete in accordance with §720.65(c)(1).

*Method 2.* Using this method, a submitter may obtain the required chemical identity information from any chemical information service or consultant, or can retrieve or develop the proper CA identifications without assistance. EPA emphasizes that with this method submitters will need to provide for each substance a correct CA Index or Preferred Name and other chemical identity information, as required under §720.45(a)(1) and (2), that is consistent with Inventory listings for similar substances. It will be the submitter's responsibility under Method 2 to seek the required information from a source the submitter believes to be sufficiently knowledgeable about CA nomenclature conventions and TSCA Inventory listings.

In contrast to Method 1, if a submitter uses Method 2 and reports any chemical identity information that is considered incorrect by EPA, the submitter, not the Agency, will be considered responsible for correcting the chemical identification. EPA will declare such a notice incomplete under §720.65(c)(1) and will not further process or review it until the submitter provides the fully correct chemical identity information specified in this amendment.

Concerning the task of generating correct CA nomenclature, it should be noted that there are many chemical names on the CAS Registry File, particularly CA names for indefinitely described substances, that are not appropriate for uniquely identifying substances on the Inventory. Thus, the application of just the CA nomenclature rules to name a new substance may not necessarily guarantee an acceptable chemical name for TSCA purposes. One must also be familiar with the ways in which similar substances are listed in the Inventory. As stated above, EPA is developing papers on specific Inventory nomenclature issues for public distribution.

Whether a submitter uses CAS or another method to obtain CA nomenclature, EPA will assume that upon sending a notice to the Agency, the submitter agrees with the chemical identity information provided by the source. Regardless of which method is chosen by a submitter for properly identifying a reported substance, EPA remains the final authority for naming new substances for the TSCA Inventory.

For submitters to have ample time to become familiar with the process of obtaining chemical identity information from CAS, another chemical information service, or a consulting party for obtaining chemical identifications, submitters should contact their chosen source at least 1 or 2 months before the intended submission date of a notice. This is especially important the first time one would have to report under this amendment.

EPA anticipates that many submitters would consider chemical identity information and/or submitter identity information given to CAS (by Method 1) or another third party (by Method 2) to be CBI. Until submitted to EPA under a provision of TSCA, CBI is not subject to EPA's procedural and security protections under TSCA. Therefore, provisions for handling any CBI first submitted to CAS or another outside party must be arranged directly with that party. Submitters should not assume that CAS or another outside party is required to adhere to EPA's TSCA-CBI procedures regarding the possession, handling, labelling, storage, tracking, auditing, or other processing of this information.

However, based on currently available information, it is EPA's understanding that any confidential, proprietary, or trade secret information that CAS would receive according to Method 1 of this rule amendment prior to the information being reported to EPA would be handled in accordance with the long-established security procedures and policies that CAS has implemented to safeguard any confidential information provided by its customers.

When submitting chemical substance identity information to CAS or any other information service, a submitter who indicates that the substance identity is CBI should be aware that a CASRN for that substance may already exist due to CAS's prior knowledge of the existence of that substance from another source. In such a case, the chemical identity would already have been assigned a CASRN and placed by CAS in its publicly accessible files.

Based on its knowledge of CAS's procedures, EPA believes that CAS currently does not place the substance identity into the publicly available CAS Registry File, if not already present there, when a submitter has requested confidential treatment of the information. However, EPA cannot ensure that CAS will continue this practice in the future, nor can EPA ensure how other services handle this type of information. As always, it is the submitter's responsibility to ensure that the information service it uses properly protects the confidentiality of its data. Submitters choosing to use either Method 1 or Method 2 should inquire how the information service, consultant, or party receiving their confidential information will handle, protect, and use such information.

The final rule at §720.45(a)(4) and (5) sets forth procedures for importers and manufacturers who do not possess the complete chemical identity information required to submit a notice to EPA about a substance they intend to import or manufacture because of proprietary claims by the U.S. or foreign supplier of the new chemical substance or a reactant used to manufacture the new chemical substance. Section 720.45(a)(4) requires that the importer of a proprietary new chemical substance have the foreign supplier follow the procedures for obtaining CAS nomenclature for the new chemical substance from CAS or alternative sources as specified in §720.45(a)(3). The foreign supplier would provide the chemical identity information on the new chemical substance specified in §§720.45 (a)(1) and (2) directly to EPA as part of a joint submission or letter of support clearly referencing the importer's notice and in the case of PMNs, the user fee identification number of the PMN submission established by the U.S. submitter (see 40 CFR 700.45(e)(3)).

Section 720.45(a)(5) contains provisions for manufacturers who cannot provide complete chemical

identity information because the new chemical substance is manufactured using a reactant whose identity is claimed confidential by its supplier. In this situation, however, due to logistical obstacles to generating correct CA nomenclature and other chemical identity information for a substance based on multiple submissions from different sources, each containing part of the overall chemical identity, EPA will not require the submitter to first develop or obtain a correct CA chemical identification for the given substance before submitting a section 5 notice. Instead, the final rule requires that the manufacturer provide all the information known by the manufacturer about the chemical identity of the reported substance and the proprietary reactant. This would typically include tradename, generic chemical name, or partial composition information about the confidential reactant such as that listed in a Material Safety Data Sheet (MSDS) or in other product literature and any other chemical identity information the submitter may know or reasonably ascertain about the confidential reactant or reported substance. In addition, the manufacturer must ensure that the supplier of the proprietary reactant sends a letter of support directly to EPA providing the specific chemical identity of the confidential reactant, including the CAS number, if available, and the appropriate PMN or exemption number, if applicable. This should be information known to or reasonably ascertainable by the supplier since that person is responsible for determining that the proprietary reactant is either on the Inventory or being manufactured under terms of an applicable section 5 exemption.

As indicated above, §§720.45(a)(4) and (5) require that persons providing information as part of a joint submission or letter of support clearly reference the importer or manufacturer's notice and user fee identification number (See 40 CFR 700.45(c)(3)), if appropriate so that EPA can be sure of properly linking the two submissions. In addition, any CBI claims must be clearly marked in the notice or letter of support along with a statement that this information must not be shared with the notice submitter. The statutory review period for a section 5 notice will not begin until EPA receives all parts of a joint notice, or all necessary supporting documents providing chemical identity information for a notice.

*Comment.* EPA should resolve nomenclature issues leading to inconsistency (1) within the TSCA Inventory, (2) between CAS and TSCA nomenclature and (3) between how a substance is named for TSCA purposes and how it is named by the chemical industry for marketing purposes.

*Response.* Basically, there is only one set of nomenclature rules used for the TSCA Inventory; the CA nomenclature system has always been utilized by EPA to represent and name substances for Inventory purposes. However, recognizing the complexity of the various types of commercial chemical substances that would be reported under TSCA and the need for accurately representing these substances on the Inventory, EPA held numerous meetings with trade associations at the time the Initial Inventory was compiled to develop guidelines for identifying these substances. Before the Inventory was initially compiled, EPA worked with CAS to refine some of the nomenclature policies for certain categories of chemical substances, such as (1) substances of variable composition, (2) natural fats, and (3) polymers.

The TSCA Inventory was initially compiled from information submitted by chemical manufacturers, importers, and processors. Perceived Inventory inconsistencies reflect the different ways in which similar substances were described and reported by submitters. Differences in commercial intent, author emphasis, and level of detail or knowledge of composition resulted in some variation in names. This flexibility in nomenclature was considered necessary by the chemical industry at the time of the Initial Inventory reporting. The Agency checked the original 160,000 reports for the Initial Inventory using a computer program that was designed to identify obvious discrepancies; the Agency then worked with the submitters of problem substances to correct the Inventory reports. If there were no obvious discrepancies, the Agency was not able to identify substances that were identified incorrectly by the submitters, and consequently, some incorrectly identified substances might have been added to the Inventory. However, when the Agency adds substances to the Inventory through the PMN program, it works with the submitters and CAS to attempt to ensure that consistent nomenclature is used.

The Agency will continue using its current nomenclature system, striving to maintain consistency. As discussed above, a series of Inventory nomenclature guidance papers (that will be available through TSCA's Assistance Information Service) is under development at the Agency to publicly articulate Agency nomenclature practices used for Inventory representation of various types of chemical substances.

*Comment.* CA nomenclature should not be required for TSCA submissions; CAS should not have an exclusive interest.

*Response.* EPA developed the TSCA Inventory using CA nomenclature and numbers; CAS has been assisting EPA in compiling, maintaining and updating the Inventory since 1977. CA nomenclature and numbers are used by all major industrial countries for their chemical inventories. This form of international harmonization enhances international trade and conserves the resources of chemical industries and governments. Many major chemical manufacturers now utilize CA nomenclature, too. The use of one nomenclature system minimizes confusion in regulatory matters and trade, and facilitates compliance monitoring. Moreover, the Agency has the authority to specify the form of nomenclature for TSCA purposes. Therefore, the Agency believes that the use of CA nomenclature is appropriate. Submitters have the choice of which nomenclature service to use, as long as names are consistent with TSCA nomenclature requirements.

*Comment.* Problems with nomenclature not provided by CAS should not delay Agency review.

*Response.* Chemical identification errors by submitters result in wasted resources and significant delays for both EPA and submitters. For this reason, the Agency has determined that it will consider submissions incomplete and thus delay their review if the incorrect nomenclature is received from a source other than CAS. The Agency believes, as a result of its years of experience using CAS nomenclature, that chemical substance identities provided by CAS specifically for TSCA purposes will rarely be in error and that any errors would be relatively minor. EPA has insufficient experience with other chemical nomenclature services to allow EPA to assume that the nomenclature provided by such services would normally be consistent with Inventory nomenclature requirements.

*Comment.* The burden of supplying CA nomenclature is significant, both in terms of time and financial resources.

*Response.* The Agency disagrees with this comment. The Agency recognizes that the time and cost of submitting a notice will increase to some extent because of the requirement to use CAS nomenclature. This will be true for those who utilize the TSCA nomenclature services of CAS or other providers or choose to develop CAS nomenclature on their own. EPA does

not believe that this requirement will present significant problems because, in EPA's experience under the section 5 program, some submitters already use CAS private registry services, despite the absence of a requirement to do so under the previous PMN regulations, apparently with minimal added cost or delay.

The Agency recognizes that the lead time required to prepare a PMN may increase. In most cases, submitters can be preparing other sections of their notices pending nomenclature assignments. The added up-front time in compiling a PMN should not be a major factor. According to EPA records many PMN substances are not manufactured until a month or more after the PMN review period ends. The Agency believes that submitters should always take the time necessary to ensure that their chemical substance is correctly identified upfront. The practice of relying on EPA to correct submitter errors, after the fact, has over the years consumed significant Agency resources. The Agency believes that this change in the procedural rule will place this responsibility where it legitimately belongs.

*Comment.* The burden imposed on small manufacturers and importers is too large.

*Response.* EPA does not consider this burden to be unreasonable, especially because small companies already save $2,400 on each of their PMN submissions compared with larger companies. Small companies have historically been responsible for a disproportionately large number of errors in chemical identities. The burden of generating CA nomenclature will be offset, in many cases, because with the inclusion of proper chemical names in the initial section 5 notice the review period will not be suspended for problems with chemical identity. Small companies may also benefit significantly from an early knowledge of the correct chemical identity, which may enhance their customer service, Inventory search efforts, and regulatory compliance.

*Comment.* Requirements to generate CA nomenclature will create problems in protecting confidentiality.

*Response.* The Agency does not believe that the requirement for CA nomenclature will create undue problems with confidentiality for submitters. All submitters must be responsible for the confidentiality of their information prior to submission to the Agency.

*Comment.* EPA should not require CA nomenclature for polymers and for *bona fide* inquiries (*bona fides*).

*Response.* While submitters must report all monomers and other reactants used to manufacture reported polymers, CA nomenclature is required for polymers, in part, because in certain cases the appropriate CA name for the polymer is based on more than just the names of the monomers and other reactants. CA nomenclature for certain polymeric substances may be based on structural repeating units or other important structural features of the polymeric material. Examples include certain block polymers, certain post-treated or functionalized polymers, and siloxanes and silicones. The Agency has chosen to maintain a consistent policy for nomenclature using CA names for all substances, avoiding the potential confusion and compliance problems which could occur if only some substances required CA names.

In a separate rulemaking published concurrently with this document, the Agency has decided not to require CAS nomenclature for polymers that are manufactured under terms of the polymer exemption in accordance with 40 CFR 723.250, since the Agency will no longer review exemption notices for exempted polymers. However, since chemical identity information is required as part of the recordkeeping requirements, persons who are manufacturing polymers under terms of the polymer exemption are encouraged to use standard CA nomenclature in their records.

The Inventory search process is the same for both PMNs and for *bona fides*. In the case of *bona fides*, chemical identity issues frequently have interfered with the Agency's ability to give an accurate response to submitters within the 30–day period to which the Agency has committed itself. In general, there have been more problems with chemical identity for *bona fides* than for PMNs, in part because much less chemical information has been required for *bona fides* than for PMN submissions. Once a correct chemical name is developed for purposes of a *bona fide*, the same name can be used for a subsequent PMN submission without further expense.

### *B. Revised Requirements for Bona Fides*

The Agency is amending §720.25 by revising certain provisions of the procedures to establish a *bona fide* intent to manufacture or import a substance. This amendment reduces or simplifies existing analytical information requirements, modifies and/or clarifies other existing information requirements, and requires some additional types of information in *bona fides*.

The amendments eliminate the need for elemental analysis data [former §720.25(b)(2)(iv)] as well as reduce and simplify other analytical information requirements [former §720.25(b)(2)(v)] by identifying an infrared spectrum as the usual practice for characterizing the new chemical substance. Two other parts of this section, regarding chemical identity information, and the description of research and development (R&D) activities and use [former §720.25(b)(2)(i) and (iii), respectively] were modified and/or clarified. There are three new information requirements regarding the most probable manufacturing site and process to be used, as well as an approximate date when the submitter would be likely to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that the amendments represent a balanced trade-off of requirements between the former and amended provisions. The amendments will enable submitters to better demonstrate a *bona fide* intent while the Agency will be better able to protect the CBI of the original submitters of Inventory substances. The additional information or data required in the amendment is considered reasonably ascertainable by the submitter, and generally would have been determined already by the time the submitter has developed a *bona fide* intent to manufacture or import a substance for a commercial purpose. Under the amended §720.25(b)(2)(i), submitters of a *bona fide* must provide, as described in the amended provisions of §720.45(a) discussed in unit II.A above, a currently correct CA Index Name or CA Preferred Name, whichever is appropriate, and a currently correct CASRN (if the substance already has a CASRN assigned to it). In addition, the Agency requires a molecular formula and a complete or partial chemical structure diagram if these are known or reasonably ascertainable. Failure to fully comply with the chemical identification elements of this requirement will result in the *bona fide* being declared incomplete by EPA and returned to the submitter.

The amendments modify the requirement for a description of R&D activities conducted to date on the substance and the purpose for manufacture or import [former §720.25(b)(2)(iii)]. Since in the past many submitters have inadvertently omitted one of these two different pieces of information in their notices, EPA is making the requirements clearer by separating the requests for the description of R&D activities and the

purpose for which the submitter will manufacture or import the substance into different subparagraphs of the amended rule [amended §720.25(b)(2)(iii) and (iv), respectively]. In addition, in the amended §720.25(b)(2)(iii)(A), EPA elaborates on the information required by listing some of the general types of R&D activities to be reported. Also, the year in which R&D was started by the submitter on the substance is required. EPA believes that these modifications will enable the submitter to indicate the scope and length of its commitment towards developing the substance for commercial use. EPA expects that this information be briefly stated.

In the amended §720.25(b)(2)(iii)(B), EPA provides an alternative reporting requirement for importers who do not perform R&D activities on the substance and have no knowledge of R&D activities that may have been conducted outside of the United States. Such importers will be allowed, in lieu of presenting R&D information, to indicate for how long, and in which country a given substance has been in commerce outside the United States, as well as to state whether they believe that the substance has already been used outside of the United States for the same commercial applications intended by the submitter. This alternative requirement is similar to the informal EPA practice in the past of allowing such a prospective importer to satisfy the former §720.25(b)(2)(iii) by providing certain information on foreign commercial activity of the substance.

In the amended §720.25(b)(2)(iv), for clarity, the term ''purpose'' used in the former §720.25(b)(iii) has been replaced by the phrase ''major intended application or use'' because some submitters have misunderstood the type of information required and have not provided a description of the intended end use.

EPA has simplified the analytical data requirements in the amended §720.25(b)(2)(v) to reflect the usual practice of submitters providing an infrared spectrum to characterize the chemical substance. An infrared spectrum is required, unless infrared analysis is not suitable for the substance or does not yield good structural information about the substance. In such cases, the amendment requires a spectrum or instrumental readout from another method of spectral or instrumental analysis that yields better structural or compositional information.

Amended §720.25(b)(2)(vi) consists of a minor but new information requirement to estimate the month and year in which the person would intend to submit a section 5 notice for the substance if it is not found in the Inventory. EPA believes that submitters with a *bona fide* interest in a substance would have already considered a future timeframe for reporting the substance under section 5 if in fact it is a new chemical substance. The intent of this requirement is not to legally bind the submitter to a certain date for submission of a PMN. In addition to using this information to determine a demonstration of a *bona fide* intent to manufacture or import the substance, if EPA can anticipate how many *bona fide* submitters may report their substances in PMNs in a given year, the Agency may be able to better allocate resources for reviewing the expected PMNs.

Amended §720.25(b)(2)(vii) requires the address of the facility under the submitter's control where the substance is most likely be manufactured or processed in the future for a commercial purpose. For imported substances it requires the facility at which processing is most likely to occur, if any.

Amended §720.25(b)(2)(viii) requires a manufacturer to briefly describe either in words or with a process flow diagram the manufacturing process that the submitter would most likely use to produce commercial quantities of the substance. The process description does not have to be detailed or comprehensive. Importers are required to briefly describe how the substance would most likely be processed or used at a site controlled by them, or, if no processing or use of the substance is anticipated to occur at a submitter-controlled facility, an importer may state that such commercial activity is not expected to occur. This information is not intended to be legally binding, but rather to assist EPA in determining whether the submitter appears to have serious intentions for commercializing the substance in question.

The Agency has also clarified the procedure for a foreign manufacturer or supplier to provide confidential chemical identity information directly to EPA, to complete a notice when the chemical identity is considered proprietary information by the foreign party and will not be disclosed to the *bona fide* submitter. As amended, it is the importer's responsibility at §720.25(b)(3)(i) to ensure that the foreign supplier provides the required chemical identity information in accordance with §§720.45(a)(1), (2), and (3) to EPA in a timely manner so that EPA can easily link the information to the importer's *bona fide.*

The amendments at §720.25(b)(3)(ii) indicate how to meet chemical identification requirements when submitters of substances to be manufactured or imported do not possess full knowledge of the chemical identity of the substance to be reported because a purchased reactant or component used in the reported material has a confidential chemical identity that is the proprietary information of the supplier. Similar to the procedures specified at §720.45(a)(5) for section 5 notices involving confidential (often trademarked or tradenamed products) reactants or starting materials, the *bona fide* submitter reports all the information known by the submitter about the substance identity. In addition, the supplier must submit a letter of support to EPA providing the specific chemical identity of the proprietary reactant, including the CAS number, if available, and referencing the submitter's *bona fide.* As previously discussed in this Unit under Correct Chemical Identity, correct CA nomenclature is not required when a reported substance involves the use of a purchased proprietary reactant. This is due to logistical obstacles involved in generating correct CA identifications for substances based on multiple submissions of parts of the overall identity from different sources. However, the submitter must coordinate with the supplier to ensure that the remaining specific chemical identity information is sent by the chemical supplier directly to EPA in a timely manner, to complete the *bona fide* request and initiate review by EPA. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the submitter's *bona fide*, the *bona fide* will be considered incomplete.

Further, EPA has included language in amended §720.25(b)(9) to describe what constitutes an incomplete *bona fide*, and how EPA will handle incomplete ones. When an incomplete *bona fide* is received and identified as such, EPA will immediately return the *bona fide* (minus any supplier-confidential portions) directly to the submitter. The submitter will then have to resubmit the completed *bona fide*, in its entirety, to have EPA perform the Inventory search and respond to the inquiry.

*Comment.* Appropriate *bona fide* intent exists even though many *bona fide* substances are never submitted as PMNs.

*Response.* Each *bona fide* request requires a certification statement about commercial intent. As a result, the Agency believes it is reasonable to expect that most *bona fide* submissions involving substances not found to be on the Inventory would result in

subsequent PMNs. This judgment takes into account the types of factors that could legitimately cause submitters to change their minds. The Agency expects that once the new requirements are in place, a larger percentage of *bona fides* will eventually result in submission of PMNs.

*Comment.* The proposed *bona fide* requirements are burdensome and the existing requirements need not be changed; EPA should not require process information, specific manufacturing site, the year that research and development started (or the length of foreign use), or the estimated date of PMN submission in order to establish *bona fide* intent.

*Response.* EPA believes that the information requested does not cause a significant burden because it should be known to or reasonably ascertainable by the submitter without developing or collecting additional data. EPA believes that submitters who have not yet considered these topics or developed this information are not at a commercial development stage consistent with showing *bona fide* intent.

*Comment.* EPA should focus on abusers of the *bona fide* process rather than increasing the reporting burdens on all submitters.

*Response.* The Agency believes that the perceived problem of submitter abuse of the *bona fide* process involves more than a few submitters. EPA believes that the best solution is to improve the integrity of the entire process through the new requirements so that all submitters will demonstrate a serious *bona fide* intent prior to receiving confidential Inventory information.

*Comment.* Greatly increased requirements for *bona fide* intent may lead to more PMN submissions.

*Response.* Rather than increasing the number of PMNs, EPA believes that the revised procedures will reduce the number of *bona fides* from persons who do not have a *bona fide* intent to manufacture the substance. In any event, persons who intend to manufacture or import a new chemical substance for a commercial purpose are free to submit a PMN without submitting a prior *bona fide*.

*C. ''Two percent rule'' for Polymers*

Section 720.45(a)(2)(iii) allows submitters to indicate on the PMN form which monomers and other reactants used at 2 weight percent or less (based on the dry weight of the polymer) should be included as part of the polymer description on the Inventory. This gives a manufacturer the flexibility of increasing the weight percent above the 2 percent level without submitting another PMN, but also requires that the monomer or reactant always be present at some level in the polymer. In practice, many polymer manufacturers currently request Agency pre-approval of a consolidated PMN to allow the manufacture of a new polymer with levels of monomers above and below the two percent level (i.e., with and without the monomer in the polymer's chemical identity). As a general rule, if the weight of monomer or reactant charged to the reaction vessel is 2 percent or less, the monomer or reactant is not considered part of the chemical identity of the polymer, unless indicated by the submitter on the PMN form. The 2 percent limit for polymers, referred to as the ''two percent rule'', has been in place since the Inventory reporting regulations were published on December 23, 1977 (see 40 CFR 710.5(c)) and was adopted because the Agency and the regulated community believed it would be difficult to identify the exact amount of monomers or other reactants actually incorporated in the final polymer. Accordingly, polymer manufacturers can use other monomers or reactants at 2 percent or less without changing the chemical identity of an Inventory-listed polymer.

Under the final rule, persons may continue to determine the weight percentage of monomer or other reactant based on the weight of monomer or other reactant actually ''charged'' to the reaction vessel. However, §720.45(a)(iii)(B) now allows persons the flexibility, where technically feasible, to determine the minimum weight of monomer or other reactant required in theory to account for the actual weight of monomer or other reactant molecules or fragments chemically ''incorporated'' (chemically combined) in the polymeric substance manufactured. Consequently, a PMN submitter or a person relying on existing polymer Inventory listings may determine which monomers or other reactants constitute the polymer identity on the basis of either method.

During the compilation of the Inventory, the method of reporting the percent composition of monomers and other reactants ''as charged'' was viewed as a reasonable approach by chemical and polymer industries. However, due to advanced analytical capabilities developed over the intervening years, certain polymer manufacturers asked EPA to revise the ''two percent rule'' to allow manufacturers the option of determining the amounts of monomers and other reactants that are present ''in chemically combined form'' (incorporated) in a polymer as an alternative to the practice of requiring reporting based on the amounts added (charged) to the reaction vessel. The final rule allows this option. The Agency believes that allowing submitters to report on the basis of amounts incorporated in the polymer will provide a better indicator of physical, chemical, and toxicological properties of polymers. At the same time, this action will allow manufacturers greater flexibility in commercial innovation, reduce the number of unnecessary PMNs representing slight variations in polymer composition, and provide greater consistency with international reporting policies. However, the Agency believes that manufacturers should be aware that there may be certain drawbacks and burdens involved in using the method of computation based on incorporated amounts of monomers and other reactants. For example, use of the ''incorporated'' method may have regulatory consequences if process modifications (such as a change in catalyst or solvent used or method and/or order of charging the reactants) affect the degree of chemical incorporation such that the 2 percent level is exceeded for a monomer or other reactant not specified as part of the chemical identity for the polymer, as discussed in the proposed rule (58 FR 7664).

If a person determines those monomers or other reactants used at 2 percent or less on the basis of the amount incorporated in the polymer, EPA believes that it is reasonable to require that such manufacturers maintain in their records analytical data or appropriate theoretical calculations (if it can be documented that an analytical determination is not feasible or not necessary) to demonstrate that the amounts of monomers and other reactants incorporated in the manufactured polymer have been accurately determined [§720.45(a)(2)(iv)]. Additional guidance on appropriate measurements or theoretical calculations is available in EPA's Draft Technical Guidance Document on the Polymer Exemption Rule. That document is in the docket for that rulemaking (OPPTS 50594B) and is available through the TSCA Assistance Information Service.

EPA recognizes that it was a matter of convenience, rather than one of science, to have thus far required reporting of the amounts of polymer reactants charged rather than the amounts incorporated; the former method requires only ''bookkeeping'', while the latter may require extensive and expensive analytical work. After 16 years of experience with the Inventory and PMN

reporting rules, however, EPA has come to realize that the ''amount charged'' approach has drawbacks. In particular, this approach of identifying many polymers based on monomers and other reactants charged to the reactor in quantities significantly larger than the amounts found to be incorporated in the polymer may not adequately represent the physical, chemical, and toxicological properties of the polymer.

Until now under the PMN rule, inefficiently incorporated reactants, reactants charged in large excess, and reactants with other functions besides their reactant ones were often likely to produce reportable polymers, even though the degree of chemical incorporation may have been less than or equal to two percent. For example, free-radical initiators are often charged in quantities greater than two percent to start many polymer chains simultaneously and limit the amount of high-molecular-weight polymer produced. Chemical incorporation of these initiators is inefficient, since many processes other than chain initiation can consume the initiator. The weight of the final polymer that can be attributed to fragments originating from the initiator is often less than 2 percent by weight. In the past, a manufacturer may have used many different initiators, all charged at greater than 2 percent, to produce what would be the same polymer if the ''incorporated'' method of computation was used. The result represented what many manufacturers believed to be excess reporting. Similar problems arose with solvents that have reactive functions, and with neutralizing agents used in excess of their salt-forming capacities. Technical details concerning the ''two percent rule'' are contained in EPA's Draft Technical Guidance Document on the Polymer Exemption Rule, which is available in the public docket for this rulemaking [OPPTS–50593B].

The Agency has always believed the actual content of a polymer is a better indicator of its physical, chemical, and toxicological properties, but adopted the ''amount charged'' method of computation as a matter of convenience to industry. The Agency believes that, in light of advanced analytical capabilities, it is now reasonable to also allow the submitter to optionally use the amounts of monomers and other reactants incorporated, as an alternative to the ''amounts-charged'' method.

*Comment.* Several comments supported EPA's proposal to modify the ''two percent rule'' by allowing polymer manufacturers to determine the amounts of monomers and other reactants that are ''incorporated'' in the polymer, as an alternative to the current practice of reporting based on the ''amounts charged'' to the reaction vessel. One comment stated that the use of the incorporation method, where the technology is available and feasible, more accurately represents the actual properties of the polymer. Commenters also stated that PMN submitters and/or manufacturers relying on existing listings of polymers on the Inventory should be able to use either method as long as they are in compliance with the ''two percent rule.''

*Response.* The proposed amendment was intended to allow this flexibility. Persons relying on existing Inventory listings of polymers or persons submitting PMNs may use either method as long as they can demonstrate the percentage of monomers or other reactants either charged to the reaction vessel or incorporated in the polymer.

*Comment.* The amendment to the ''two percent rule'' should be clearly stated to be an option rather than a regulatory requirement. EPA should abandon the proposed rule's arbitrary distinction and clarify that, for purposes of TSCA compliance, a polymer should be described either by analysis or by calculation.

*Response.* EPA has clearly indicated in this preamble and in the regulatory text that a manufacturer may use either method to determine which monomers or other reactants constitute the polymer identity.

*Comment.* EPA should establish a ''five percent rule'' for non-monomer reactants such as free radical initiators, chain transfer reagents, and pH neutralizing agents. These reactants are known to correlate poorly with the amounts charged and incorporated. Routine analytical testing would be inconclusive.

*Response.* EPA continues to believe, as stated in the preamble to the proposed rule (58 FR 7672), that a 5 percent rule would create a larger potential variation in those physical and chemical properties of a polymer that may have toxicological implications. Further, adopting a ''five percent rule'' would not be consistent with the Agency's goal of harmonizing, to the extent possible, the reporting of polymers with other international reporting practices that use a 2 percent standard.

In the past, industry has asserted that free radical initiators were not expected to be incorporated, so allowing a company to use the ''incorporated'' method should already provide a greater measure of flexibility. Manufacturers who are unable to develop reliable analytical data or reasonable theoretical calculations to support their use of the ''incorporated'' method should continue to follow the current practice of calculating 2 percent based on the monomers and other reactants ''charged'' to the reaction vessel.

*Comment.* EPA should allow use of any scientifically sound and technically appropriate incorporation measurement or theoretical calculation method. The proposal should be modified so that analytical and recordkeeping requirements for the incorporation method are not so onerous as to virtually negate the advantage of its use. A company that uses the ''incorporated'' method would be required to maintain analytical data to support this determination at the site of manufacture.

*Response.* The rule does not specify any particular analytical methodology for the ''incorporated'' method. The Agency would also allow theoretical calculations if it can be documented that an analytical determination is not technically feasible or not necessary as discussed above. Further, EPA believes that it is reasonable to require that manufacturers who use the ''incorporated'' method maintain records of analytical data or appropriate theoretical calculations that demonstrate compliance with the ''two percent rule'' at the site of manufacture to verify compliance in a straightforward manner.

### *D. Multiple photocopies of section 5 submissions*

The Agency is amending §720.40(d)(2) to require submitters to provide EPA with one original and two complete copies of section 5 notices, in addition to a sanitized copy in which CBI has been deleted under §720.80. Submitters are also required to provide one original and two additional copies of any test data.

*Comment.* EPA should not require the submission of copies of test data. Test reports range from hundreds to thousands of pages and submitting extra copies would result in excessive volumes of material for EPA to handle.

*Response* The two extra copies of test data will reduce the Agency's administrative burden and will facilitate scientific reviews of the data submitted. The Agency's request for these test results falls clearly within the General Information Collection Guidelines, 5 CFR 1320.6 of the rules on the Paperwork Reduction Act of May 10, 1988 promulgated by the Office of Management and Budget. Under these guidelines, the Agency is allowed to request an original and two copies of

any document that satisfies its statutory requirements.

*E. Electronic Transmission of Section 5 Notices; Removal of PMN from the CFR*

EPA is amending the PMN rule at §720.40(a) to allow for future reporting via magnetic or other electronic media. This amendment is designed to promote the use of electronic media for data submission. EPA is investigating the use of magnetic tape, floppy diskettes, and electronic data interchange as means to submit information, and is participating in a nation-wide trend toward reducing reliance on paper for information transfer. EPA has already taken steps in TSCA and other program areas to encourage electronic submission, and intends to expand this effort to the PMN review program.

Information may be submitted electronically (on magnetic or other media) once EPA publishes a format for electronic submissions. Pilot projects using electronic submissions for the Inventory Update Rule (40 CFR part 710) and Toxic Release Inventory Rule (40 CFR part 372) will be used as a baseline for enhancements to developing a standard Agency-wide format. Such submissions will have to meet this format and all other media specifications published by EPA.

EPA is taking this opportunity to remove the full text of EPA form 7710–25 (PMN form) from the Code of Federal Regulations (CFR)(40 CFR part 720, Appendix A) and also correct the address for availability (40 CFR 720.40). The PMN form, which has been printed each year in the CFR, requires approximately 10 pages of publication and does not represent the most current document in use by PMN submitters. Removing the form from the CFR reflects standard Agency policy of not printing the full text of final forms in the CFR and will result in a significant cost savings for the Agency. In general, EPA has determined that it is not legally obligated to publish forms in full text. Under the Administrative Procedure Act (APA), 5 U.S.C. 552(a)(1)(c), EPA is obligated to describe forms and give a source of availability. In addition to removing the form, EPA is making conforming amendments to those sections that reference part 720, Appendix A to remove reference to Appendix A.

In addition, the PMN form that appears in the CFR has been photo reduced and cannot be used in a practical sense by those who must comply with the reporting requirements. More importantly, the Agency has continued to implement editorial revisions to the form since it was first published as part of the final rule in 1983. These revisions are intended to reflect PMN regulations and the policy initiatives implemented during the intervening years. Any substantive removal or addition of reporting requirements is accomplished by notice and comment rulemaking.

*Comment.* Comments were generally supportive of developing an electronic data interchange (EDI) with the Agency, although some reservations and concerns were expressed. Comments questioned (1) how practical it might be to submit some information, such as toxicity studies, electronically, (2) signature certification and (3) the security of CBI submissions. One comment suggested holding a workshop to address CBI concerns.

*Response.* EPA will not implement an EDI application for TSCA section 5 submissions until an Agency policy is developed for EDI standard practices. Thus, submitters would not have to develop unique interchange devices for section 5.

Electronic authentification technology is commercially available to address signature certification concerns and general security concerns. The Agency is required to protect CBI, and any EDI practices will ensure the confidentiality of data transmissions. The Agency is receptive to working with industry and other concerned parties to develop an EDI application for the New Chemicals Program, including CBI procedures. In the interim, the Agency encourages the use of PMN software developed by industry and approved for use by the Agency for generating hardcopy section 5 notices.

In addition to EDI, the Agency is analyzing other electronic reporting media to determine which is most appropriate for these submissions, given the variety of documents and materials involved. All comments on electronic reporting are welcome.

*F. Mandatory Form for Notice of Commencement of Manufacture or Import (NOC)*

Under this amendment, all PMN submitters are required to use a standard one-page form to submit a NOC. In addition, the NOC information requirements at §720.102(c) have been slightly expanded; however, all information can be provided on the one-page standard form (EPA Form 7710–56).

Every NOC received at EPA on or after the effective date of these final rule amendments must contain the required information on the new standard NOC reporting form. This form will automatically be provided to each PMN submitter as an attachment to EPA's letter acknowledging PMN receipt letter sent to submitters shortly after each PMN is received. Persons who have not submitted NOCs for PMNs that have been previously submitted to EPA can obtain copies of the NOC form from the TSCA Assistance Information Office. Many submitters are already reporting voluntarily using a similar form.

Previous NOC information reporting requirements, which are unaffected by these amendments, include specific chemical identity of the PMN substance, PMN number, the date manufacture or import commenced, and substantiation of CBI claims for chemical identity, which is required at the time a NOC is submitted. The amendment at §720.102(c)(ix) requests a clear indication of whether the submitter identity and/or other information on the form are also claimed as confidential. Confidentiality claims can only be asserted by the submitter if corresponding claims were made in the PMN.

EPA is amending NOC reporting to require that complete submitter identity information be provided on the form. This would include the name and address of the submitter, the name and dated signature of the authorized official, and the name and telephone number of a technical contact in the United States.

The amended NOC provisions also require a generic chemical name for a substance whose chemical identity is claimed as CBI. This name could either be (1) the same generic name provided in the PMN, (2) a generic name as revised by the submitter, as long as it masks no more of the chemical identity than the original generic name provided, or (3) an improved or corrected generic name agreed to via negotiation with EPA.

Because the initial intention to manufacture or import a substance sometimes changes between the time of PMN submission and the NOC, submitters are required to specify in the NOC whether commencement occurred via manufacture or import and the address of the site(s) at which manufacture commenced.

All of the above amendments to information requirements for NOCs involve information that the submitter will already know by the time manufacture or importation of the substance has commenced. Consequently, providing this information in the NOC will not constitute a significant reporting burden. EPA will not process a NOC that does not contain the chemical

identity, the date of commencement, and the PMN number.

*Comment.* EPA needs to define in the regulations or form the ''date of commencement.'' Is this the first date that a chemical reaction occurs in the manufacturing operation; the date that the last amount of final product is produced in a batch operation; the first date that the PMN chemical is drummed off; or another date?

*Response.* The Agency considers the date of commencement to mean the date of completion of manufacture for non-exempt commercial purposes of the first amount (e.g., batch, drum, etc.) of the chemical substance identified in the PMN. The Agency chose not to use the date on which the manufacturing process is started because that particular process may in some instances not result in the successful manufacture of the PMN substance. For importers, the date of commencement is the date the new chemical substance clears United States Customs. The final rule contains this definition.

*Comment.* The information required for an NOC duplicates that already submitted in the PMN: site of manufacture, name and telephone number of technical contact. This information should not be required, since a manufacturer is free to change any of these items after the PMN review period has expired. The Inventory Update Rule is the appropriate vehicle for the Agency to gather this information.

*Response.* An NOC may be filed years after the PMN was submitted. In the interim, the information provided in the original PMN may have changed due to change of location, change in ownership, etc. Up-to-date telephone numbers are important when problems need to be resolved. The Agency believes that the site of first manufacture or import is an important compliance monitoring tool. Although the Agency recognizes that a company may switch from import to domestic manufacture (or vice versa) after the PMN review period has expired, the Agency may find cause to investigate such changes that occur shortly after the expiration of the PMN review period.

*Comment.* The NOC form should be made available for public comment prior to finalization.

*Response* Although the form was not published in the **Federal Register** as part of the proposed rulemaking, it was available in the public docket and at the public hearings for this rulemaking held on April 26–27, 1993. Draft copies of the form have been available through the TSCA Assistance Information Office. The form has also been routinely distributed to all PMN submitters for use on a voluntary basis during the past year.

*Comment.* EPA should clarify its statement that an NOC will be declared incomplete if any required information is missing. It is possible that EPA could declare an NOC incomplete past the 30–day period, potentially resulting in a compliance problem. EPA should provide that the original NOC filing date will be considered the effective date for determining compliance with the requirement that the NOC be filed within 30 days after the first day of commercial manufacture or importation. For example, if EPA determines that responses to CBI claims are inadequate, the NOC should not be declared untimely because it is considered incomplete.

*Response.* EPA will continue its practice of adding a PMN substance to the Inventory as of the date the Agency receives the NOC from the PMN submitter with the correct chemical identity, date of commencement and PMN number. Further, EPA does not believe it is a significant burden for companies to submit a completed standard one-page NOC form that requests information that should be known to the submitter when manufacture or importation commences.

*Comment.* The NOC form should be computer compatible or the submitter should be allowed to use a computer facsimile as long as it has the same format as the NOC form. Companies should not be required to receive advance approval of computer facsimiles.

*Response.* The Agency will allow submitters to use a computer generated form, as long as the form is readable by Agency staff.

*Comment.* EPA should allow an ''authorized official or designated representative'' to sign the NOC form. The term ''authorized official'' might be construed to mean a corporate vice president. This type of form should not require a corporate vice president's signature.

*Response.* The ''authorized official'' has always been designated by the submitting company and should be a person that the submitting company deems responsible for the truth and accuracy of each statement in the certification.

*Comment.* The NOC form and/or accompanying instructions should indicate clearly that a sanitized version must be submitted if any information is claimed confidential and that all submitter identification information will be treated as CBI. Furthermore, the submitter must be permitted to claim the signature of the authorized official as CBI.

*Response.* EPA does not require submission of a sanitized copy of the NOC form because NOC submissions are not placed in the public files. Information on the NOC form that was claimed confidential in the original PMN submission may also be claimed confidential on the NOC form, although new confidentiality claims cannot be made in an NOC for information not claimed as confidential in the original PMN submission.

*G. Comments on Other Issues*

The Agency also discussed certain issues relating to CBI claims in the proposed rule (58 FR 7665) but did not propose any additional PMN rule amendments at that time. The Public Docket for this rulemaking contains a complete set of comments on this issue, as well as comments received in response to a discussion on use of geographic locators by section 5 reporting facilities. Several industry commenters expressed concern about the discussion in the proposal regarding enhanced review of all confidential claims. Specifically, some commenters were concerned that the discussion signalled a change of rules on making CBI claims in the PMN process. As stated in the proposal, the purpose behind the discussion of CBI claims filed in PMNs was to remind the regulated community of its obligations concerning CBI claims. As noted at that time, there are no changes to the CBI procedures included in the PMN rule amendments.

Industry submitters have an obligation to insure that only that information which needs to be kept confidential is claimed as CBI. Further, CBI claims are routinely reviewed and submitters who make broad, indiscriminate CBI claims will be contacted and requested to substantiate their claims pursuant to 40 CFR part 2.

**III. Economic Analysis**

EPA has evaluated the potential costs of the amendments for potential submitters of section 5 notices. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50593B).

The regulatory impact analysis estimates the costs and benefits attributable to the regulation. In this case, the analysis also contains estimates for the three additional amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These new provisions amend the PMN Exemptions for Polymers, Chemical Substances

Manufactured in Quantities of 1,000 Kilograms or Less per Year (40 CFR part 723), and the Expedited Process for Issuing Significant New Use Rules (40 CFR part 721). Because these regulations are amendments to current regulations, their costs and benefits are incremental as compared to the current regulations.

The costs and benefits associated with these amendments are partially quantified; many of the benefits are unquantified but are of significant importance. Considering only the quantified costs and benefits, there is a slight cost increase for industry and a slight cost savings for EPA. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

| Annual Number of Submissions | Annual Cost Savings ($ Million) | |
|---|---|---|
| | Industry | Government |
| 1,000 ..... | -0.1 | 0.1 |
| 2,000 ..... | -0.3 | 0.2 |
| 3,000 ..... | -0.4 | 0.2 – 0.3 |

The aspects of the amendments that have the greatest quantified cost impact on industry are the change in requirements for a *bona fide* TSCA Inventory search request and the requirement to provide correct chemical identification. Both requirements are expected to enable the Agency to utilize resources more effectively, thereby providing better service to industry. One of the major unquantified benefits of this amendment is increased flexibility under the ''two percent rule,'' allowing industry to make minor compositional changes, providing more manufacturing latitude to the submitter and possibly reducing the number of section 5 submissions. Another unquantified change is the requirement to use a standardized form for NOCs, the impact of which is expected to be minimal as many submitters are already using a similar form.

## IV. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50593B). The record includes basic information including public comments considered by the Agency in developing this rule amendment. A public version of the record without any confidential information is available in the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G307 (Northeast Mall), 401 M St., SW., Washington, DC.

## V. Other Regulatory Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a ''significant regulatory action'' as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant'') (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866, it has been determined that this rule is not a ''significant regulatory action'' under section 3 (f) of the Order. This action is therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the section 5 notice submitters were small firms, the number of small businesses affected by this action will not be substantial.

### *C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq and have been assigned OMB control number 2070–0012. The public reporting burden for this collection of information is estimated to vary from 18 to 21 hours per response, with an average of 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

### List of Subjects

**40 CFR Part 704**

Chemicals, Confidential business information, Environmental protection, Hazardous substances, Imports, Reporting and recordkeeping requirements.

**40 CFR Part 720**

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

**40 CFR Part 721**

Administrative practice and procedure, Chemicals, Environmental protection, Hazardous substances, Imports, Labeling, Occupational Safety and Health, Reporting and Recordkeeping requirements.

Dated: March 21, 1995.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR chapter I, subchapter R, parts 704, 720 and 721 are amended as follows:

1. In part 704:

## PART 704—[AMENDED]

a. The authority citation for part 704 continues to read as follows:

**Authority:** 15 U.S.C. 2607(a).

b. Section 704.25 is amended by revising paragraph (d) to read as follows:

**§704.25 11-Aminoundecanoic acid.**

* * * * *

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice Form (EPA Form 7710–25).

* * * * *

c. Section 704.104 is amended by revising paragraph (d) to read as follows:

**§704.104 Hexafluoropropylene oxide.**

* * * * *

(d) *What information to report.* Persons identified in paragraph (b) of this section must submit a Premanufacture Notice Form (EPA Form 7710–25).

* * * * *

2. In part 720:

## PART 720 — [AMENDED]

a. The authority citation for part 720 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2613.

b. Section 720.25 is amended by revising paragraphs (a), (b)(1), (2)(i),

(2)(iii), (2)(iv), (2)(v), (3), and by adding paragraphs (b)(2)(vi), (2)(vii), (2)(viii), and (b)(9) to read as follows:

**§720.25 Determining whether a chemical substance is on the Inventory.**

(a) A new chemical substance is any chemical substance that is not currently listed on the Inventory.

(b)(1) A chemical substance is listed in the public portion of the Inventory by a specific chemical name (either a Chemical Abstracts (CA) Index Name or a CA Preferred Name) and a Chemical Abstracts Service (CAS) Registry Number if its identity is not confidential. If its identity is confidential, it is listed in the public portion of the Inventory by a TSCA Accession Number and a generic chemical name that masks the specific substance identity. The confidential substance is listed by its specific chemical name only in the confidential portion of the Inventory, which is not available to the public. A person who intends to manufacture or import a chemical substance not listed by specific chemical name in the public portion of the Inventory may ask EPA whether the substance is included in the confidential Inventory. EPA will answer such an inquiry only if EPA determines that the person has a *bona fide* intent to manufacture or import the chemical substance for commercial purposes.

(2) * * *

(i) Except as provided in paragraphs (b)((3)(i) and (ii) of this section, the specific chemical identity of the substance that the person intends to manufacture or import, using the currently, correct CA name for the substance and the other correct chemical identity information in accordance with §§720.45(a)(1), (2)), and (3).

* * * * *

(iii)(A) A brief description of the research and development activities conducted to date related to the substance, including the year in which the person first started to conduct research or development activity on the substance, and the general types of research and development activities conducted thus far (e.g., synthesis, substance isolation/purification, formulating, product development, process development, end-use application, toxicity testing, etc.). The person must also indicate whether any pilot plant or production-scale plant evaluations have been conducted involving the manufacture or processing of the substance.

(B) If an importer is unable to provide the information requested in paragraph (b)(2)(iii)(A) of this section from the foreign manufacturer or supplier, the following information shall be submitted:

(*1*) A brief statement indicating how long the substance has been in commercial use outside of the United States.

(*2*) The name of a country in which it has been commercially used.

(*3*) Whether the importer believes that the substance has already been used commercially, in any country, for the same purpose or application that the importer is intending.

(iv) A specific description of the major intended application or use of the substance.

(v) An infrared spectrum of the substance, or alternative spectra or other data which identify the substance if infrared analysis is not suitable for the substance or does not yield a reasonable amount of structural information. When using alternative spectra or instrumental analysis, the person must submit a spectrum or instrumental readout for the substance.

(vi) The estimated date (month/year) in which the person intends to submit a Premanufacture Notice (PMN) for this substance if EPA informs the notice submitter that the substance is not on the Inventory.

(vii) The address of the facility under the control of the submitter at which the manufacture or processing of the substance would most likely occur. For an imported substance, the facility under the control of the importer at which processing of the substance would likely occur, if any.

(viii)(A) For substances intended to be manufactured in the United States, a description of the most probable manufacturing process that would be used by the submitter to produce the substance for non-exempt commercial purposes.

(B) For substances intended to be imported, a brief description of how the submitter is most likely to process or use the substance for a commercial purpose. If the substance is not expected to be processed or used at any facility under the importer's control, a statement to this effect must be included along with a description of how the substance will be processed or used at sites controlled by others, if this information is known or reasonably ascertainable.

(3)(i) If an importer cannot provide the chemical identity information required by paragraph (b)(2)(i) and (v) of this section because it is claimed confidential by its foreign manufacturer or supplier, the foreign manufacturer or supplier must supply the required information directly to EPA in accordance with §720.45(a)(1), (2), and (3) and reference the importer's notice. If the appropriate supporting document from the foreign party is not received within 30 days after EPA receives the importer's notice, the notice will be considered incomplete.

(ii) If a manufacturer cannot provide all of the required information in accordance with §720.45(a)(1), (2), and (3) because the new chemical substance is manufactured using a reactant that has a specific chemical identity claimed as confidential by its supplier, the notice must contain chemical identity information that is as complete as known by the manufacturer. In addition, a letter of support for the notice must then be sent to EPA by the chemical supplier of the confidential reactant, providing the specific chemical identity of the proprietary reactant. The letter of support must reference the manufacturer's notice. If the appropriate supporting document from the supplier is not received within 30 days after EPA receives the manufacturer's notice, the notice will be considered incomplete.

* * * * *

(9) If the required chemical identity information has not been reported correctly or completely in the notice (except as provided under paragraph (b)(3)(ii) of this section) or if any other required data or information has been omitted or is incomplete, EPA will consider the whole notice to be incomplete. As soon as an incomplete notice is identified as such by EPA, the Agency will immediately return the notice directly to the submitter. The submitter must then resubmit the whole, completed *bona fide* notice to EPA in order to have the Agency perform the desired Inventory search and respond to the notice.

c. Section 720.40 is amended by revising paragraphs (a) and (d) to read as follows:

**§720.40 General.**

(a) *Use of the notice form; electronic submissions.* (1) Each person who is required by subpart B of this part to submit a notice must complete, sign, and submit a notice containing the information in the form and manner specified in this paragraph. The information submitted and all attachments (unless the attachment appears in the open scientific literature) must be in English. All information submitted must be true and correct.

(2) Information may be submitted on paper, or electronically, as follows:

(i) Information submitted on paper must be submitted in the form and manner set forth in EPA Form No. 7710–25, which is available from the

Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Information which is not submitted on the EPA Form No. 7710-25 or a photocopy thereof (e.g., on a form created by commercial form-making software) must be in a format pre-approved by the Agency.

(ii) Information may be submitted electronically (on magnetic or other media) pursuant to an EPA published format for electronic submissions. Such submissions must comply with this format and all other media specifications published by EPA. Persons submitting electronically must still complete and submit on paper the Certification and Submitter Identification sections of Form 7710–25.

* * * * *

(d) *General notice requirements.* (1) Each person who submits a notice must provide the information described in §720.45 and specified on the notice form, to the extent such information is known to or reasonably ascertainable by the person. In accordance with §720.50, the notice must also include any test data in the person's possession or control, and descriptions of other data which are known to or reasonably ascertainable by the person and which concern the health and environmental effects of the new chemical substance.

(2) A person who submits a notice to EPA under this part must provide EPA with an original and two complete copies of the notice, including all test data and any other information attached to the notice form. If information is claimed as confidential pursuant to §720.80, a sanitized copy must also be provided.

* * * * *

d. Section 720.45 is amended by revising paragraph (a) to read as follows:

**§720.45 Information that must be included in the notice form.**

* * * * *

(a)(1) The specific chemical identity of the substance that the person intends to manufacture or import, which includes the following:

(i) The currently correct Chemical Abstracts (CA) name for the substance, based on the Ninth Collective Index (9CI) of CA nomenclature rules and conventions, and consistent with listings for similar substances in the Inventory. For each substance having a chemical composition that can be represented by a specific, complete chemical structure diagram (a Class 1 substance), a CA Index Name must be provided. For each chemical substance that cannot be fully represented by a complete, specific chemical structure diagram (a Class 2 substance), or if the substance is a polymer, a CA Index Name or CA Preferred Name must be provided (whichever is appropriate based on CA 9CI nomenclature rules and conventions). In addition, for a Class 2 substance, the notice must identify the immediate chemical precursors and reactants by specific chemical name and Chemical Abstracts Service Registry Number (CASRN), if the number is available. Tradenames or generic names of chemical precursors or reactants are not acceptable as substitutes for specific chemical names.

(ii) The currently correct CASRN for the substance if a CASRN already exists for the substance.

(iii) For a Class 1 substance and for any Class 2 substance for which a definite molecular formula is known or reasonably ascertainable, the correct molecular formula.

(iv) For a Class 1 substance, a complete, correct chemical structure diagram; for a Class 2 substance or polymer, a correct representative or partial chemical structure diagram, as complete as can be known, if one can be reasonably ascertained.

(2) For a polymer, the submitter must also report the following:

(i) The specific chemical name and CASRN, if the number is available, of each monomer and other reactant used, at any weight percent, to manufacture the polymer. Tradenames or generic names of chemical reactants or monomers are not acceptable as substitutes for specific chemical names.

(ii) The typical percent by weight of each monomer and other reactant in the polymer (weight of the monomer or other reactant expressed as a percentage of the weight of the polymeric chemical substance manufactured), and the maximum residual amount of each monomer present in the polymer.

(iii) For monomers and other reactants used at 2 weight percent or less (based on the dry weight of the polymer manufactured), indicate on the PMN form any such monomers and other reactants that should be included as part of the polymer description on the Inventory, where the weight percent is based on either (A) the weight of monomer or other reactant actually charged to the reaction vessel, or (B) the minimum weight of monomer or other reactant required in theory to account for the actual weight of monomer or other reactant molecules or fragments chemically incorporated (chemically combined) in the polymeric substance manufactured.

(iv) For a determination that 2 weight percent or less of a monomer or other reactant is incorporated (chemically combined) in a polymeric substance manufactured, as specified in paragraphs (a)(2)(iii)(B) of this section, analytical data or appropriate theoretical calculations (if it can be documented that analytical measurement is not feasible or not necessary) to support this determination must be maintained at the site of manufacture or import of the polymer.

(v) Measured or estimated values of the minimum number-average molecular weight of the polymer and the amount of low molecular weight species below 500 and below 1,000 molecular weight, with a description of how the measured or estimated values were obtained.

(3) The person must use one of the following two methods to develop or obtain the specified chemical identity information reported under paragraphs (a)(1) and (2) of this section and must identify the method used in the notice:

(i) *Method 1.* Obtain the correct chemical identity information required by paragraphs (a)(1) and (2) of this section directly from the Chemical Abstracts Service (CAS), specifically from the CAS Registry Services Inventory Expert Service, prior to submitting a notice to EPA. A copy of the chemical identification report obtained from CAS must be submitted with the notice.

(ii) *Method 2.* Obtain the correct chemical identity information required by paragraphs (a)(1) and (2) from any source. The notice will be incomplete according to §720.65(c)(1)(vi) if the person uses Method 2 and any chemical identity information is determined to be incorrect by EPA.

(4) If an importer submitting the notice cannot provide all the information specified in paragraphs (a)(1) and (2) of this section because it is claimed as confidential by the foreign supplier of the substance, the importer must have the foreign supplier follow the procedures in paragraph (a)(3) of this section and provide the correct chemical identity information specified in paragraphs (a)(1) and (2) of this section directly to EPA in a joint submission or as a letter of support to the notice, which clearly references the importer's notice and PMN User Fee Identification Number. The statutory review process will commence upon receipt of both the notice and the complete, correct information.

(5) If a manufacturer cannot provide all the information specified in paragraphs (a)(1) and (2) of this section because the new chemical substance is

manufactured using a reactant having a specific chemical identity claimed as confidential by its supplier, the manufacturer must submit a notice directly to EPA containing all the information known by the manufacturer about the chemical identity of the reported substance and its proprietary reactant. In addition, the manufacturer must ensure that the supplier of the confidential reactant submit a letter of support directly to EPA providing the specific chemical identity of the confidential reactant, including the CAS number, if available, and the appropriate PMN or exemption number, if applicable. The letter of support must reference the manufacturer's name and PMN User Fee Identification Number under §700.45(c)(3) of this chapter. The statutory review period will commence upon receipt of both the notice and the letter of support.

* * * * *

e. Section 720.80 is amended by revising paragraph (b)(2) to read as follows:

**§720.80 General provisions.**

* * * * *

(b) * * *

(2) If any information is claimed as confidential, the person must submit, in addition to the copies specified by §720.40, a sanitized copy of the notice form (or electronic submission) and any attachments.

(i) The original and two copies of the notice, specified at §720.40 (or electronic submission) and attachments must be complete. The submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form (or in EPA's electronic submission instructions).

(ii) The sanitized copy must be complete except that all information claimed as confidential in the original must be deleted. EPA will place this sanitized copy in the public file.

(iii) If the person does not provide the sanitized copy, or information in a health and safety study (except information claimed as confidential in accordance with §720.90), the submission will be deemed incomplete and the notice review period will not begin until EPA receives the sanitized copy or the health and safety study information is included, in accordance with §720.65(c)(1)(vii).

* * * * *

f. Section 720.95 is amended by revising the third sentence to read as follows:

**§720.95 Public file.**

* * * Any of the nonconfidential material described in this subpart will be available for public inspection in the TSCA Nonconfidential Information Center, Room B607, Northeast Mall, 401 M St., SW., Washington, DC between the hours of 1 p.m. and 4 p.m., weekdays, excluding legal holidays.

g. Section 720.102 is amended by revising paragraphs (c) and (d) to read as follows:

**§720.102 Notice of commencement of manufacture or import.**

* * * * *

(c) *Information to be reported on form.* (1) The notice must be submitted on EPA (Form 7710–56), which is available from the Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The form must be signed and dated by an authorized official. All information specified on the form must be provided. The notice must contain the following information:

(i) The specific chemical identity of the PMN substance.

(ii) A generic chemical name (if the chemical identity is claimed as confidential by the submitter).

(iii) The premanufacture notice (PMN) number assigned by EPA.

(iv) The date of commencement for the submitter's manufacture or import for a non-exempt commercial purpose (indicating whether the substance was initially manufactured in the United States or imported). The date of commencement is the date of completion of non-exempt manufacture of the first amount (batch, drum, etc.) of new chemical substance identified in the submitter's PMN. For importers, the date of commencement is the date the new chemical substance clears United States customs.

(v) The name and address of the submitter.

(vi) The name of the authorized official.

(vii) The name and telephone number of a technical contact in the United States.

(viii) The address of the site where commencement of manufacture occurred.

(ix) Clear indications of whether the chemical identity, submitter identity, and/or other information are claimed as confidential by the submitter.

(2) If the submitter claims the chemical identity confidential, and wants the identity to be listed on the confidential portion of the Inventory, the claim must be reasserted and substantiated in accordance with §720.85(b). Otherwise, EPA will list the specific chemical identity on the public Inventory. Submitters who did not claim the chemical identity, submitter identity, or other information to be confidential in the PMN cannot claim this information as confidential in the notice of commencement.

(d) *Where to submit.* Notices of commencement of manufacture or import should be submitted to:

TSCA Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

* * * * *

## Appendix A [Removed]

h. Appendix A to part 720 is removed.

3. In part 721:

## PART 721—[AMENDED]

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

**Authority:** 15 U.S.C. 2604, 2607, and 2652(c).

b. Section 721.25 is amended by revising the last sentence of paragraph (a) to read as follows:

**§721.25 Notice requirements and procedures.**

(a)* * * The notice must be submitted on EPA Form 7710–25, and must comply with the requirements of part 720 of this chapter, except to the extent that they are inconsistent with this part 721.

* * * * *

[FR Doc. 95–7709 Filed 3–24–95; 3:32 pm]
BILLING CODE 6560–50–F

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## 40 CFR Part 721

**[OPPTS–50595B; FRL–4921–9]**

**RIN 2070–AC14**

## Amendment for Expedited Process To Issue Significant New Use Rules for Selected New Chemical Substances; Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating an amendment to the regulations governing significant new uses of chemical substances. The amendment authorizes EPA to impose any of the ''significant new use'' designations in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate ''significant new use'' rules (SNURs) for

certain new chemical substances not subject to the Toxic Substances Control Act (TSCA) section 5(e) Orders (referred to as ''non-5(e) SNURs''). Currently, the significant new use regulations limit the type of activities which EPA can designate as a significant new use by expedited rulemaking without first issuing a section 5(e) Order. This amendment allows EPA to promulgate expedited SNURs for certain new chemical substances without issuing a section 5(e) Order for the substance, and thereby facilitates EPA's ability to efficiently and expeditiously regulate new chemical substances.

**DATES:** This rule will become effective on May 30, 1995. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 12, 1995.

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

**SUPPLEMENTARY INFORMATION:** Under section 5 of TSCA, when EPA regulates activities associated with a new chemical substance described in a premanufacture notice (PMN), EPA generally issues an Order under section 5(e) of TSCA regulating the PMN submitter and/or promulgates a SNUR under section 5(a)(2) regulating all manufacturers and processors of the PMN substance. EPA promulgated a procedural ''Generic SNUR'' (or ''Expedited Follow-Up Rule'') in 40 CFR part 721 on July 27, 1989 (54 FR 31298). On February 8, 1993, EPA proposed amending the SNUR regulations in 40 CFR 721.170(c)(1) to authorize EPA to impose any of the ''significant new use'' designations in 40 CFR part 721 subpart B using expedited rulemaking procedures to promulgate non-5(e) SNURs. 58 FR 7676. (Public hearings were held in April 1993.) Previously, significant new use designations available for expedited non-5(e) SNURs were limited to environmental release activities and certain industrial, commercial, or consumer activities. This amendment authorizes EPA to include other important designations, such as protection in the workplace and hazard communication, in non-5(e) SNURs promulgated via expedited rulemaking procedures.

As explained in the rule proposal: ''Whereas a section 5(e) Order applies only to the original PMN submitter who signs the Order, a SNUR applies to all manufacturers and processors of the chemical substance. The reporting requirements of a non-5(e) SNUR apply also to the original PMN submitter (because, without a section 5(e) Order, the PMN submitter is not exempted by 40 CFR 721.45(i)). Since only one Agency action is required instead of two, and fewer EPA resources are necessary to obtain similar regulatory results, a non-5(e) SNUR is more efficient than a combination of section 5(e) Order and '5(e)-SNUR' (under 40 CFR 721.160) to regulate new chemical substances.'' 58 FR 7677. The rule proposal also stated that promulgation of a non-5(e) SNUR would allow the PMN submitter to commence commercial manufacture of the PMN substance sooner than would issuance of a section 5(e) Order followed by promulgation of a 5(e)-SNUR.

## I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). The enumerated factors pertain to the potential for increased manufacturing and processing volume, increased exposure, and changes in anticipated methods of manufacture, processing, distribution and disposal. Once EPA has, by rule, determined that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before commencing any manufacturing, importing, or processing activities designated by the SNUR as a ''significant new use.'' The mechanism for reporting under this requirement is set out in 40 CFR 721.10.

The supporting rationale and background for SNURs are more fully set out in the preamble to EPA's first SNURs issued under the Expedited Follow-Up Rule and published on April 24, 1990 at 55 FR 17376. Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations.

## II. Applicability of General Provisions

General provisions for SNURs appear in subpart A of 40 CFR part 721. These provisions describe persons subject to SNURs, recordkeeping requirements, exemptions to reporting requirements, and applicability of SNURs to uses occurring before the effective date of a SNUR. Rules on user fees appear in 40 CFR part 700. Persons subject to a SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(d)(1) and 5(b), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action, if appropriate, under sections 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

## III. Discussion of Comments and Final Rule

The public comments submitted to EPA on the proposed rule indicated a need for clarification regarding EPA's goals underlying this rule amendment. The goals that EPA believes are promoted by this amendment are: (1) to regulate new chemical substance risks using fewer EPA resources, and (2) to allow PMN submitters proposing to produce such substances to commence commercial manufacture sooner (subject to appropriate limitations that reduce risk). The amendment will achieve these goals by eliminating language in 40 CFR §721.170(c)(1) that previously prevented EPA from promulgating expedited non-5(e) SNURs containing worker protection or hazard communication requirements. In cases where those types of requirements are appropriate, this amendment will enable EPA and the PMN submitter to bypass development of a section 5(e) Order and proceed directly to promulgation of a SNUR. The PMN submitter and other interested parties will generally have a similar opportunity for dialogue with EPA and input into development of the specific regulatory terms as they do in the development of a section 5(e) Order/5(e)-SNUR combination.

1. *Comment.* Many comments indicated concern that EPA would use the amendment to promulgate more SNURs with less input from the PMN submitter.

*EPA Response*. To the contrary, EPA's intentions are to: (1) issue fewer section 5(e) Orders, not more SNURs; and (2) where appropriate, develop non-5(e) SNURs based on voluntary amendments of PMNs that accomplish the same end as section 5(e) Order/5(e)-SNUR combinations but without the extra step.

In particular, EPA intends a process involving the active participation of the original PMN submitter for the substance that may be subject to a SNUR; this process will be less formal than negotiating a section 5(e) Consent Order.

As explained in the preamble to the proposed rule (58 FR 7678, February 8, 1993), the non-5(e) SNUR process provides interested persons several opportunities for comment. Section 721.170(d)(2) requires EPA to notify the PMN submitter at least 7 days before expiration of the 90–day PMN review period regarding the Agency's risk concerns and the activities under consideration for designation as a significant new use. In most cases, EPA actually expects to provide this notice many days before the ''Day-83'' deadline required by section 721.170(d)(2). Of course, once a PMN submitter receives this notice, the submitter may respond to EPA with comments regarding both the risk concerns and the potential regulatory terms or ''significant new use'' designations. Furthermore, the expedited ''direct final'' non-5(e) SNUR rulemaking procedure does provide a comment opportunity, which was described in the preamble to the proposed rule (58 FR 7678) as well as in the preamble to the Generic SNUR (54 FR 31305, July 27, 1989). Thus, this expanded non-5(e) SNUR process will in fact provide individual notice to the PMN submitter before the non-5(e) SNUR is published, followed by notice and opportunity for comment to all persons when the non-5(e) SNUR is published in the **Federal Register**.

Also as stated in the rule proposal: ''A non-5(e) SNUR is typically appropriate for PMNs on chemical substances expected to be toxic but where the PMN indicates the submitter's intention to limit activities, implement control measures, or otherwise adequately mitigate human exposures and environmental releases. Activities described in such PMNs may not present an unreasonable risk of injury to human health or the environment so as to warrant the issuance of an Order under section 5(e) of TSCA [followed by promulgation of a 5(e)–SNUR], but deviations from the described activities may present an unreasonable risk warranting the imposition of regulatory controls via a section 5(e) Order. In those cases, a non-5(e) SNUR may be the least burdensome regulatory alternative for the Agency to pursue, as it will allow the PMN submitter to proceed with planned activities while requiring notification to, and review by, EPA for activities which have not been reviewed.'' 58 FR 7677.

Additionally, using this non-5(e) SNUR process, where EPA perceives that use of a new chemical substance as described in the PMN may present unreasonable risk, then, instead of suggesting a section 5(e) Consent Order/5(e)-SNUR combination, EPA may informally request the submitter to amend its PMN to include appropriate exposure controls. If the submitter agrees to amend its PMN accordingly, EPA can then allow the submitter to commence manufacture immediately upon expiration of the 90–day PMN review period. Because the amended PMN would reflect the same controls that will be in the non-5(e) SNUR, EPA will not require the submitter to wait until the non-5(e) SNUR is published to commence commercial manufacture.

If, instead, the PMN submitter cannot reach agreement with EPA regarding the need or appropriateness of the modified terms for the PMN, and/or prefers to negotiate a formal section 5(e) Consent Order, EPA may then issue a section 5(e) Order. However, experience shows that additional time and resources will very probably need to be expended before the section 5(e) Order can be finalized, which must occur before EPA will allow the PMN review period to expire, which in turn must precede commencement of commercial manufacture of the PMN substance. Section 5(e)(1)(B)(ii) of TSCA prohibits EPA from issuing a section 5(e) Order after expiration of the 90–day statutory review period. Therefore, EPA will not allow the review period to expire until the section 5(e) Order is finalized, and ''extension'' (pursuant to TSCA section 5(c)) or ''suspension'' (pursuant to 40 CFR 720.75(b)) of the review period is usually necessary to allow sufficient time for development of the section 5(e) Order. TSCA section 5(a) prohibits commencement of commercial manufacture of the PMN substance before the 90–day statutory PMN review period expires. Furthermore, if EPA and the submitter cannot agree on the terms for a section 5(e) Consent Order, EPA can issue a section 5(e) Order unilaterally.

Thus, this rule amendment is intended to eliminate unnecessary section 5(e) Orders and should not itself increase the number of new chemical substances regulated by EPA via SNURs under section 5 of TSCA. Rather, substances that would formerly have been regulated by 5(e)-SNURs may now be regulated by non-5(e) SNURs. The amendment still requires EPA to provide notice allowing the PMN submitter (or others) to respond to EPA with comments regarding the perceived risks and the proposed regulatory requirements for a given new chemical substance.

2. *Comment.* Some comments indicated a desire for criteria to restrict EPA's discretion as to when it would use the non-5(e) SNUR procedure. The Chemical Manufacturers' Association (CMA) suggested that EPA should commit to promulgating expedited non-5(e) SNURs only when EPA finds that the chemical substance ''may present an unreasonable risk,'' i.e., the standard articulated in TSCA section 5(e) for the issuance of administrative orders.

*EPA Response.* EPA has stated many times that TSCA authorizes EPA to promulgate a SNUR without finding that a chemical substance ''may present unreasonable risk.'' Rather, section 5(a)(2) of TSCA and 40 CFR 721.170(b), which is not being amended in this rulemaking, set forth the criteria EPA has used and will continue to use for non-5(e) SNURs.

As discussed above, where EPA perceives that the scenario described in a PMN may present an unreasonable risk, EPA may request the submitter to amend the PMN to include appropriate exposure controls. If the submitter refuses, EPA would not promulgate a non-5(e) SNUR, but would likely attempt to negotiate a section 5(e) Consent Order. Unlike promulgation of a non-5(e) SNUR, to issue a section 5(e) Consent Order, EPA must determine that activities associated with the PMN substance ''may present an unreasonable risk'' of injury to human health or the environment. Again, however, extension or suspension of the review period would be necessary to allow sufficient time for development of the section 5(e) Order, and, if EPA and the submitter cannot agree on the need or terms for a section 5(e) Consent Order, EPA can issue a section 5(e) Order unilaterally.

Nevertheless, as elaborated elsewhere, EPA believes that non-5(e) SNURs will save time and resources for both EPA and industry without unduly sacrificing the ability to negotiate the regulatory terms. EPA expects that PMN submitters will recognize this and will generally prefer a non-5(e) SNUR over a section 5(e) Order/5(e)–SNUR combination.

3. *Comment.* Many commenters disapproved of EPA's ability to use the expedited non-5(e) SNUR procedure to impose regulatory requirements not listed in subpart B of 40 CFR part 721.

*EPA Response.* The final rule limits ''significant new use'' designations for non-5(e) SNURs to subpart B provisions only. EPA expects that limiting expedited non-5(e) SNURs to the standard ''significant new use'' designations published in subpart B of

40 CFR part 721 will help provide PMN submitters with a clear understanding when notified by EPA of the regulatory terms that EPA intends to apply to their PMN substance via a non-5(e) SNUR.

If, in the future, EPA decides that additional ''significant new use'' designations are needed for non-5(e) SNURs, EPA can add those designations to subpart B via notice and comment rulemaking or promulgate individual SNURs containing those designations through notice and comment rulemaking.

4. *Comment.* Several commenters disagreed with EPA's assertion that, since suspensions to issue section 5(e) Orders would be eliminated, the proposed amendment would allow commercial manufacture to commence sooner. They stated the amendment would actually cause greater delay because EPA could declare any use inconsistent with the PMN to be a significant new use. They claim that the PMN submitter will need more time to identify all potential uses and associated information before submitting a PMN, so that EPA will not promulgate a SNUR requiring further notices for those uses of the substance.

*EPA Response.* The comment indicates a need to clarify how EPA regulates new chemical substances and particularly how the word ''use'' is employed in the context of new chemical substance SNURs and section 5(e) Consent Orders. The SNURs promulgated by EPA to date for new chemical substances show that EPA rarely, if ever, designates as a ''significant new use'' every activity not expressly contemplated in the PMN. Rather, EPA generally defines a ''significant new use'' for new chemical substances as activities lacking specific exposure controls (such as gloves, goggles, respirators and waste disposal) which therefore may present an unreasonable health or environmental risk. EPA will define as ''significant'' any use not identified in the PMN only where the substance is expected to be toxic and EPA cannot be certain that specific exposure controls will adequately mitigate all concerns. In sum, the amendment is not intended to change the substantive content or terms that EPA has used to regulate new chemical substances or to write SNURs in the past; rather, it is a procedural change enabling EPA to establish those same terms in an expedited SNUR without first issuing a section 5(e) Consent Order. This amendment should not change the amount of time and effort a PMN submitter must invest to identify potential uses of the new chemical substance. PMN submitters will continue to be required to provide information that is known to or reasonably ascertainable by the submitter when the PMN is submitted and throughout the PMN review period. (15 U.S.C. 2604(d)(1)(A), 40 CFR 720.45).

5. *Comment.* One commenter stated that certain designations in subpart B are ''by their nature'' not appropriate for non-5(e) SNURs (quoting the preambles to the proposed and final Generic SNUR, see e.g., 54 FR 31304). The commenter also stated ''EPA should not designate the failure to use personal protective equipment as a significant new use of a chemical substance that has completed premanufacture review and is not subject to an Order under Section 5(e). If such protection is required, it should be imposed on the initial manufacturer who submitted the PMN pursuant to a Section 5(e) Consent Order .... EPA should not shortcut this process simply because 'a non-5(e) SNUR is more efficient than a combination of Section 5(e) order and a 5(e) SNUR ... to regulate new chemical substances.''' 58 FR 7677.

*EPA Response.* Several provisions in subpart B (i.e., 40 CFR 721.80(k), (q), and (t)) expressly refer to terms of the section 5(e) Consent Order and are thus inapplicable to non-5(e) SNURs. There is no need to specifically exclude these provisions from §721.170.

Based on over 4 years of experience with 5(e)–SNURs and non-5(e) SNURs under §§721.160 and 721.170, EPA now believes that provisions for worker protection and hazard communication should be available if EPA and the PMN submitter prefer to bypass the cumbersome section 5(e) Order/5(e)–SNUR process and go directly to a non-5(e) SNUR. Under the revised non-5(e) SNUR process, allowing designation of any of the ''significant new use'' provisions in subpart B, risks to workers can be controlled via SNURs without the need to also issue Consent Orders.

EPA believes the imposition of worker protection requirements in a non-5(e) SNUR is appropriate where the new chemical substance is expected to be toxic to humans and the PMN indicates that the submitter will implement worker protection measures. Again, this non-5(e) SNUR will not only save EPA resources, but will also allow the PMN submitter to commence manufacture sooner (i.e., immediately upon expiration of the 90–day review period, rather than suspending or extending the review period to negotiate a section 5(e) Order), provided that the submitter does in fact implement the stated protective measures so that the submitter is not required by the SNUR to submit another notice to EPA. The non-5(e) SNUR will bind the PMN submitter as effectively as a section 5(e) Order while saving the submitter the costs of delayed marketing of the new chemical substance.

6. *Comment.* EPA should not disrupt business by defining as a ''significant new use'' an activity which the original PMN submitter or another company commences between the filing of the notice of commencement (NOC) of manufacture (per 40 CFR 720.102) and the publication of the SNUR.

*EPA Response.* EPA generally does not consider those activities that commenced prior to publication of a proposed SNUR to be ''significant new uses.'' In SNUR preambles for individual chemicals, EPA routinely states that a ''new'' use is one that is not ongoing when the proposed SNUR is published in the **Federal Register**. If EPA is informed that a use which it proposes to define as ''new'' was already ongoing before the proposal was published, EPA will generally determine that use is not ''new.'' See, e.g., 57 FR 31326, July 15, 1992. (One exception would be if the original PMN submitter engaged in an activity prohibited by a section 5(e) Order.)

7. *Comment.* Employers have hazard communication and worker protection obligations under the Occupational Safety and Health Act without regard to the existence of TSCA section 5(e) Orders and SNURs. EPA should not over extend itself into the area of occupational safety and health.

*EPA Response.* TSCA section 5 authorizes EPA to review and regulate new chemical substances to prevent unreasonable risks to human health and the environment. A senate report discussion of TSCA section 5 expressly notes that the Federal statutes existing when TSCA was enacted, including specifically the Occupational Safety and Health Act, ''do not provide for this type of premarket scrutiny.'' *S. Rept. No. 698, 94th Cong. 2d Sess. 1 (1976).* Requirements imposed by the Occupational Safety and Health Administration (OSHA) may not always apply to new chemical substances governed by TSCA section 5. For example, OSHA hazard communication requirements only apply to a substance for which there is at least one positive study (29 CFR 1910.1200(d)(2)), whereas many new chemical substances have not been tested at all. Furthermore, OSHA permissible exposure limits (PELs) (29 CFR Part 1910) generally apply only to specific chemical substances, and very few new chemical substances subject to section 5 of TSCA are subject to OSHA PELs. Lastly, the requirements of EPA's worker protection and hazard

communication provisions in section 5(e) Consent Orders and SNURs are consistent with OSHA's requirements.

8. *Comment.* One commenter stated that the increased incidence of non-5(e) SNURs would subject more chemicals to TSCA section 12(b) export notification requirements, increasing the burden on industry and EPA to report such activity. The commenter suggested a mechanism so that substances subject to a SNUR but contained in finished products or a small percentage of a mixture were not subject to TSCA 12(b) notification.

*EPA Response.* As stated previously in response to other comments, the intent of this rule amendment is not to increase the number of new chemical substances regulated by EPA. Rather EPA expects to offer PMN submitters the option of a non-5(e) SNUR, instead of a section 5(e) Consent Order. In either instance, EPA has determined that exposure controls are needed and will regulate the substance through one of those procedural mechanisms. This rule will not increase the section 12(b) reporting burden on industry or EPA.

The same comment suggesting a *de minimis* exemption for section 12(b) reporting was recently submitted on a proposed amendment to the section 12(b) rule at 40 CFR part 707, subpart D. EPA considered this comment in that rulemaking and stated in the preamble to the final rule amending the section 12(b) rule: ''While de minimis–type regulatory exemptions may be appropriate in many circumstances, at the present time, EPA believes it is preferable to provide foreign countries 12(b) notifications so they have the opportunity to make their own determinations regarding what level of a chemical in mixtures is deemed important. However, if further experience with the 12(b) or PIC [Prior Informed Consent joint program of the United Nations Environment Programme and the Food and Agriculture Organization] programs indicate that a *de minimis* regulatory exemption is warranted, EPA will reexamine this option at a later time.'' 58 FR 40240–41; July 27, 1993. Therefore, under the current rules implementing section 12(b) of TSCA (40 CFR part 707, subpart D), if a substance or mixture is subject to a section 5(e) Order or rule, then export notification is required, except for substances contained in ''articles'' (as defined in 40 CFR 720.3(c)).

9. *Comment.* The original Generic SNUR, including the restriction on non-5(e) SNUR designations, was negotiated by a multi-interest dialogue group and should not be changed unilaterally by EPA.

*EPA Response.* EPA has followed the notice and comment rulemaking procedures required by the Administrative Procedure Act, and believes it has improved the final rule amendment in direct response to the valuable comments that were submitted. Given the elimination of non-subpart B provisions, the benefits to PMN submitters from this rulemaking, and the potential delays of procedural approaches other than promulgating this final rule at this time, EPA has decided that it is in the public interest to go forward with this final rule. EPA expects this final rule to satisfy all statutory requirements and most, if not all, interested parties.

## IV. Economic Analysis

The Agency's complete economic analysis is available in the public record for this rulemaking (OPPTS–50595B). The regulatory impact analysis estimates the costs and benefits attributable to the final regulation. In this case, the analysis also contains estimates for three amendments to other regulations, namely the Revisions of Premanufacture Notification Regulations, the Revision of Exemption for Chemical Substances Manufactured in Quantities of 1,000 Kilograms or Less Per Year, and the Revisions of Exemption for Polymers. As these regulations are amendments to current regulations, the costs and benefits are incremental and estimate the effect of the amendment with respect to the old regulation.

This non-5(e) SNUR amendment will eliminate the need to develop a section 5(e) Consent Order before promulgating an expedited SNUR in those cases where EPA determines that activities described in the PMN submission will not present unreasonable risk. The major industry benefit is the avoidance of the delay and costs associated with negotiating a Consent Order; generally, the submitter will be able to commence commercial manufacture immediately after the 90–day PMN review period without suspending or extending it. The submitter, along with other manufacturers and processors, will be bound by the expedited SNUR.

Industry savings from this amendment are based on avoidance of delay costs and are estimated to range from $65,000 to $330,000 per year. Annual government savings are estimated to range from $240,000 to $960,000. These estimates are based on the following assumptions: (1) 1,000 to 3,000 PMNs will be submitted annually; (2) in the absence of this amendment, 5% of these PMNs will be subject to section 5(e) Orders; and (3) with this amendment, 40% of these section 5(e) Orders will be avoided and replaced by non-5(e) SNURs.

## V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50595B). The record includes basic information and comments considered by the Agency in developing this rule. A public version of the record is available in the TSCA Nonconfidential Information Center, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located in Rm. NE–B607, Northeast Mall, 401 M St., SW., Washington, DC.

## VI. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a ''significant regulatory action'' as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant'') (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866 (58 FR 51735, October 4, '993) it has been determined that this rule is not a ''significant regulatory action'' under section 3(f) of the Order. This action is therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the

SNUR notice submitters were small firms, the number of small businesses affected by this rule will not be substantial.

*C. Paperwork Reduction Act*

There is no additional reporting burden associated with this amendment. The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et seq., and have been assigned OMB control number 2070–0012.

**List of Subjects in 40 CFR Part 721**

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

Dated: March 21, 1995.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR Chapter I, part 721 is amended as follows:

## PART 721 — [AMENDED]

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

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

2. By revising §721.170(c)(1) to read as follows:

**§721.170 Notification requirements for selected new chemical substances that have completed premanufacture review.**

* * * * *

(c) * * *

(1) When EPA decides to establish significant new use reporting requirements under this section, EPA may designate as a significant new use any one or more of the activities set forth in subpart B of this part. In addition, EPA may designate specific recordkeeping requirements described under subpart C of this part that are applicable to the substance.

* * * * *

[FR Doc. 95–7710 Filed 3–24–95; 3:32 pm]

BILLING CODE 6560–50–F

## 40 CFR Part 723

**[OPPTS–50594B; FRL–4929–8]**

**RIN 2070–AC14**

## Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers; Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating amendments to the polymer exemption rule to expand the exemption criteria and exempt manufacturers of eligible polymers from certain section 5 premanufacture notification (PMN) requirements. EPA has determined that the manufacture, processing, distribution in commerce, use, and disposal of new chemical substances meeting the revised polymer exemption criteria will not present an unreasonable risk of injury to human health or the environment under terms of the exemption. These final amendments reflect criteria developed and used by EPA to assess the hazards associated with new polymeric substances over the past 15 years the New Chemicals Program has been in place. EPA believes that these amendments will encourage the manufacture of safer polymers by reducing industry's reporting burden for this category of chemical substances.

**DATES:** This rule will become effective May 30, 1995. In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** James B. Willis, Acting Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404; TDD: (202) 554–0551.

**SUPPLEMENTARY INFORMATION:** The polymer exemption rule was originally promulgated on November 21, 1984. The supporting rationale and background for that exemption was published at 49 FR 46066 on November 21, 1984 and 46 FR 54688 on November 3, 1981. On February 8, 1993, EPA proposed amendments to the 1984 polymer exemption rule (58 FR 7679). Consult those documents for further information on the objectives, rationale, and procedures for the rule and the basis for the finding that polymers eligible for exemption will not present an unreasonable risk of injury to human health and the environment under terms of the exemption. The docket control number for this document is OPPTS–50594B.

The amended rule allows manufacture and distribution of polymers meeting the exemption criteria without submission of a PMN or an exemption notice prior to commencement of manufacture for a commercial purpose under terms of the exemption. However, manufacturers of exempted polymers are required to submit an annual report on exempted polymers for which manufacture or importation commenced for the first time under terms of the exemption during the preceding calendar year. Recordkeeping requirements are retained as part of the rule to document compliance with the exemption criteria. Overall, these amendments constitute a substantial revision of the existing polymer exemption rule.

### I. Background

*A. Statutory Authority*

Section 5(a)(1) of TSCA requires that persons notify EPA at least 90 days before they manufacture or import a new chemical substance for commercial purposes. A ''new chemical substance'' is any substance that is not on the Inventory of Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule, to exempt the manufacturer or importer of any new chemical substance from part or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance will not present an unreasonable risk of injury to human health or the environment. In this preamble and under the rule, references to ''manufacture'' and ''manufacturer'' include ''import'' and ''importer'', respectively, as defined in TSCA section 3 and the PMN rule.

*B. History/Rationale*

In 1984, the Agency published a TSCA section 5(h)(4) rule granting an exemption for persons who manufacture or import certain polymers, set forth at 40 CFR 723.250. Since promulgation of the 1984 polymer exemption rule (the ''1984 exemption''), the Agency has reviewed over 2,000 polymers submitted as polymer exemption notices in the 21–day review process in addition to over 10,000 polymers submitted as PMNs since the initiation of the 90–day PMN review process in 1979. In the course of performing hazard and risk assessments for these polymers, the Agency has developed internal guidelines for identifying polymeric substances that do not present an unreasonable risk of injury to human health or the environment. These guidelines are based on (1) EPA's ongoing review of the available literature on the toxicity of polymers, (2) EPA's analyses of various samples of the PMN polymer data base, (3) information provided to EPA by outside groups

during and subsequent to development of the 1984 exemption, and (4) professional judgment of EPA staff scientists. The final rule will bring the 1984 polymer exemption criteria into close alignment with the internal criteria currently being used by EPA to assess hazards and risks of polymers. The eligibility criteria in the final rule, which are based on the 1984 polymer exemption criteria, have been refined and expanded to allow more low-risk polymers to qualify for exemption. While expanding the category of safer polymers, the exemption continues to exclude or restrict those polymers that the Agency believes should be reviewed under the 90–day PMN process.

Both the Agency and the polymer industry have had 10 years of practical experience with the polymer exemption. Since the current exemption criteria define what the Agency considers to be low-risk polymers, eligible polymers generally receive only a cursory Agency review to validate that the polymer meets the eligibility criteria. Consequently, most polymers eligible for the exemption present no issues and manufacture can commence when the 21–day review period expires.

Based on the Agency's review and analysis of polymer exemption applications submitted to date, EPA has determined that an overwhelming number of submitters correctly determined the eligibility status of the polymer. Consequently, the Agency believes that it is no longer necessary for EPA to expend its limited resources to validate a polymer's eligibility under the exemption. The Agency would like to shift the resources currently expended on analytical screening of this class of low-risk substances to the substantive review of substances that present unknown or potentially higher risks. Moreover, the Agency believes that industry has become sufficiently familiar with the criteria over the past 10 years and is capable of correctly determining the eligibility of a polymer under the exemption. Therefore, EPA has decided to eliminate the requirement that a company submit an exemption application prior to the manufacture or importation of an exempted polymer under terms of the exemption. Instead, the final rule requires submission of an annual report on polymers for which manufacture or importation under terms of the exemption commenced for the first time during the preceding calendar year. However, to increase the level of assurance that polymers manufactured under the exemption meet the eligibility criteria, EPA has prepared a draft technical guidance document and will hold workshops on determining eligibility of exempted polymers for polymer manufacturers. In addition, the final rule requires that records documenting an exempted polymer's eligibility under terms of the exemption be maintained at the manufacturing site.

The Agency believes that expanding the 1984 exemption criteria and eliminating routine EPA review will increase the number of polymeric substances eligible for exemption, encourage the manufacture of safer polymers, and result in resource savings to industry and the EPA without decreasing or compromising the level of risk reduction/management afforded by a 21–day or 90–day review of these same substances.

## II. Final Amendments

### *A. Summary of Final Amendments*

*1. Definition of polymer.* To be considered for exemption, substances must meet the definition of polymer in the rule. EPA is amending the definition of ''polymer'' to adopt the exact wording of the internationally recognized definition of polymer which was developed at the Organization of Economic Cooperation and Development (OECD) Expert Group Meetings on Polymers held in Toronto, Canada (January, 1990), Paris, France (October, 1991), and Tokyo, Japan (April, 1993) and agreed upon in May, 1993 by the OECD Member Countries. (Copies of the OECD Chairperson's reports are available in the docket for this rulemaking.) The definition, which is based on the Agency's 1984 polymer definition at 40 CFR 723.250, ensures that exempt substances have the structural characteristics common to the category of substances on which EPA has based its no unreasonable risk finding. Minor revisions are included in the definition in response to comments.

2. *Classes of polymers ineligible for exemption.* Section 723.250(d) of the 1984 exemption established certain classes of polymers that were ineligible for exemption. As with the 1984 exemption, polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize will remain ineligible for exemption in this final rule. In addition, polymers that are prepared from monomers or other reactants that are included in the polymer identity must be existing chemical substances on the TSCA Inventory or otherwise excluded or manufactured under terms of another TSCA section 5 exemption. The final rule excludes from eligibility water-absorbing polymers with molecular weights (MW) equal to or greater than 10,000 daltons; moreover, the term ''water-absorbing'' has been re-defined to describe more specifically the category of polymers that the Agency believes should remain subject to the full PMN review process. The final rule also amends certain restrictions contained in the 1984 exemption for cationic polymers and polymers that contain certain elements. Restriction on polymers that contain certain reactive functional groups have been amended and are part of the eligibility criteria for polymers with MW equal to or greater than 1,000 and less than 10,000 daltons (§720.250(e)(1)).

3. *Polymers eligible for the exemption.* Polymers with number-average MW greater than 1,000 daltons and polyesters that are made from a specified list of reactants remain eligible for exemption. The final rule sets limits on oligomer content and reactive functional groups for polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons. In addition, polymers with number-average MW equal to or greater than 10,000 daltons and restricted oligomer content are also eligible for exemption. In the 1993 proposal, the Agency requested comment on its proposal to impose certain restrictions relating to potential inhalation exposure of respirable water-insoluble polymer particles, along with several alternatives for dealing with potential lung effects associated with the inhalation of water-insoluble particles of respirable size. Based on comments and further analysis of the available data, the Agency has removed the restrictions on water-insoluble polymers with MW of 10,000 daltons or greater, with the exception of water-absorbing polymers which are ineligible for exemption.

Polyesters remain eligible as in the current exemption; however, in response to comments that the Agency should expand the category of polyester polymers eligible for exemption, the final rule includes a number of additional substances in the list of acceptable polyester reactants.

Finally, the following classes of polymers are now eligible for exemption: (a) polymers that contain less than 32 percent carbon; (b) biopolymers, their synthetic equivalents, and modifications and derivatives of biopolymers; and (c) polymers made from reactants that contain halogen atoms or cyano groups.

4. *General provisions.* In the 1993 proposal, manufacturers and importers would have been required to submit an abbreviated notice within 30 calendar days following the first manufacture or import of an eligible polymer rather

than 21 days prior to manufacture (import) as required in the 1984 exemption. However, the final rule further modifies the notification provisions and now requires only that manufacturers of exempt polymers submit an annual report on all exempted polymers for which manufacture or importation under terms of the exemption commenced for the first time during the preceding calendar year. This annual report would provide the Agency with information concerning use of the exemption. Manufacturers are required to maintain specific records to document a polymer's eligibility under the exemption rule.

With the elimination of the obligation to notify EPA in advance of manufacture of an exempted polymer, the use of EPA Form 7710–25 will not be required. However, the final rule requires that certain information be maintained at the site of manufacture including chemical identity and structure, records of production volume for the first 3 years of manufacture, date of commencement of manufacture or import, certification that the polymer meets the conditions of the exemption, and information that demonstrates compliance with the exemption, including analytical data or other information that substantiates the manufacturer's claim of eligibility under criteria established for minimum number average MW and restricted oligomer content.

EPA proposed but is not requiring that polymer identity be described by a Chemical Abstracts (CA) Index Name or CA Preferred Name, since manufacturers are not required to submit an exemption notice to the Agency under the final rule. Finally, the Agency has determined, for the reasons outlined in the discussion below, that the revocation provisions in the 1993 proposal are not necessary for the Agency to make its determination that this category of substances will not present unreasonable risk to human health and the environment and has deleted these provisions in their entirety.

*B. Discussion of the Amendments and Response to Comments*

The final rule adopts many of the proposed amendments without changes. However, as indicated above, certain provisions of the proposed amendments have been revised in light of the Agency's consideration of comments received. A discussion of the major comments, the Agency's responses, and the amended provisions follow:

1. *Definition of polymer.* Under the proposal, EPA proposed to revise the definition of polymer in the 1984 exemption to conform with the international definition of polymer recently adopted by OECD Member Countries, including the United States, Canada, Japan, and the member nations of the European Union. The revised definition retains the meaning and purpose of the 1984 exemption definition of polymer. For purposes of this exemption, the term ''polymer'' means ''a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units.''

The term ''monomer unit,'' which replaces the non-standard term ''internal subunit'' used in the 1984 exemption, means the reacted form of the monomer in a polymer, i.e., the monomer must have formed at least one covalent bond with another like or unlike molecule under the conditions of the relevant polymer-forming reaction. The fact that a monomer must be capable of forming two or more such bonds is not a requirement that it do so to be considered ''the reacted form;'' one is sufficient. Consequently, ''polymer molecules,'' defined as containing ''at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant,'' continue to require at least 4 precursor units, as in the 1984 definition. The difference is that, under the proposal, at least 3 of the units must be in a ''sequence,'' and further, one of the groupings could come from an ''other reactant'' as well as from a monomer. The first change (''sequence'') is slightly more restrictive and the second (''other reactant'') slightly less restrictive than the present definition. The net effect of the change, made to be consistent with protocols of the OECD, is expected to be minimal. The term ''sequence'' is defined as part of the polymer definition in the final rule. ''Monomer'' and ''reactant'' remain consistent with the terms used for purposes of Inventory reporting and premanufacture notification, wherein ''reactants'' include monomers, chain transfer and cross-linking agents, monofunctional groups that act as modifiers, and other end groups if incorporated into the polymer molecule.

*Comment.* The Society of the Plastics Industry (SPI) commented that the new polymer definition should be clear and complete. By using wording that strays from the OECD definition, EPA has rendered its definition unclear and made interpretation difficult. The definition of ''polymer molecule'' that uses the term ''monomer unit'' cannot be equated with the earlier definition that used ''internal subunit'' because a ''monomer unit'' does not have to be internal. The term ''polymer molecule'' defined at §723.250(b), requiring at least two internal monomer units, is in conflict with the statement in the preamble that ''at least three of the units must be internal.''

*Response.* The polymer definition in the proposed rule represents a version proposed before an OECD meeting held in April 1993 in which the participants agreed upon an interpretation of the polymer definition. (The definition of the term ''polymer molecule'', which is responsible for some of the confusion, was introduced to assist in defining ''polyester,'' which is not relevant to the OECD definition of polymer.) EPA has therefore made changes in the relevant provisions of the rule.

*Comment.* SPI commented that the definition of ''reactant'' is inconsistent with the definition of ''reactive functional group'' and is problematic because of EPA's dependence on subjective intent; it recommends that the language ''reasonably be anticipated'' and ''reasonably ascertainable'' be used instead of depending on intent.

*Response.* The Agency does not believe there is an inconsistency between the definitions, nor any particular reason why they should be consistent, since they are describing different things and addressing different issues. Sodium hydroxide may be a reactant, but it can hardly be a reactive functional group. Furthermore, many chemically reactive substances are not ''reactants'' in this context because they are not intended (or reasonably anticipated) to become chemically part of the polymer.

2. *Polymers ineligible for exemption*—(a) *Exclusion of certain polymers that are cationic or anticipated to become cationic in aquatic environments.* The Agency continues to have ecotoxicity concerns for cationic polymers with specific characteristics but believes that certain restrictions in the 1984 exemption can be modified as discussed in the 1993 proposal. No comments were received on this provision. Accordingly, under the final rule, the

current restriction on cationic polymers at §723.250(d)(1) is amended to provide that certain cationic polymers will be eligible for exemption if:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (e.g., polymers that will be used as ion exchange beads), or

(ii) The combined (total) functional group equivalent weight of cationic groups (e.g., primary, secondary and tertiary amines, quaternary ammonium, phosphonium, and sulfonium) in the polymer is equal to or greater than 5,000. ''Equivalent weight'' of a functional group means the ratio of the molecular weight to the number of occurrences of that functional group in the molecule. It is the weight of substance that contains one formula-weight of the functional group. In addition, the definition of ''cationic polymer'' was rephrased in the final rule to replace the term ''subunit,'' which as discussed previously in this unit under Definition of Polymer is considered a non-standard term.

(b) *Exclusion of polymers with certain weight content of certain elements.* The rule continues to exclude from eligibility polymers containing certain levels of particular elements from the exemption if the elements are present as an integral part of the polymer structure, or present as counterions in the polymer. However, as proposed, the Agency is expanding the list of allowable elements set forth at §§723.250(d)(2)(ii)(B) and (C) to include chlorine, bromine, and iodine as the monatomic counterions; and fluorine, chlorine, bromine, and iodine as covalently bound to carbon. The Agency received no comments on this specific provision.

(c) *Exclusion of polymers that degrade, decompose, or depolymerize.* The rule continues the exclusion at §723.250(d)(3) for polymers that are designed or reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. A description of what the Agency considers degradation, decomposition and depolymerization for purposes of this exemption is contained in the final rule. No specific comments were received on this provision.

(d) *Exclusion of polymers that are prepared from monomers or other reactants that are not already on the TSCA Inventory.* As proposed, polymers that are manufactured using monomers or other reactants that are not on the TSCA Inventory, or that are not manufactured under an applicable section 5 exemption are not eligible for exemption at §723.250(d)(4). Some confusion surrounded the Agency's position on the use of non-Inventory listed monomers or other reactants at levels of 2 percent or less, as evidenced at the public hearing on the proposed rule held in Washington, D.C. on April 26–27, 1993 and written comments on this proposal. EPA is making clear that this provision relates specifically to monomers or other reactants that would be considered part of the polymer's identity, if the same substance was reported in a PMN, i.e., those substances charged to the reaction vessel or incorporated in the polymer at levels greater than 2 percent. The provision will not restrict the use of non-Inventory listed reactants that are not considered part of the polymer identity, provided that those reactants do not introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption. In other words, the ''two percent rule'' affects only the identity of the polymer, not its eligibility. This is consistent with the 1984 exemption. However, in practice, the use of non-Inventory listed monomers or reactants at 2 percent or less may be applicable only to imported polymers since chemical substances used as feedstocks in domestic manufacture must be on the Inventory or otherwise excluded or exempted from the section 5 requirements. In a separate rulemaking being published concurrently with this document [Revisions of Premanufacture Notification Regulations], EPA amended the ''Two Percent Rule'' to allow submitters greater flexibility in determining the amount of monomer or other reactant used in the manufacture of a polymer. Please consult that rule for further information.

As stated in the proposal, hazard concerns for polymers are often based on a concern for residual monomers or other reactants in the polymer. Since residual levels of monomers or other reactants are not restricted under the exemption and EPA is not reviewing exempt polymers, the Agency is restricting this exemption to those polymers manufactured using only Inventory-listed (or otherwise excluded or manufactured under an applicable section 5 exemption) constituent monomers or other reactants that are part of the polymer's chemical identity. This ensures that the Agency will review polymers that contain new chemical monomers or other reactants through the full PMN process and can regulate any new polymer that may cause concern as a result of residual monomers or reactants that are new chemical substances.

*Comment.* The Synthetic Organic Chemical Manufacturers Association (SOCMA), The Dow Chemical Company (Dow), Monsanto Company, and SPI commented that imported polymers should be treated as polymers produced in the United States. That is, if the imported polymer meets the polymer exemption criteria but contains a non-Inventory listed monomer or reactant (at greater than 2 percent), that polymer should be eligible for the polymer exemption as long as the residual monomer or reactant level is kept below 1 percent (0.1 percent if a carcinogen). The importer may have no reason to ever bring the monomer or other reactant into the United States, and thus no PMN would be filed on that material. This would reduce the burden on those companies importing polymers that meet the exemption criteria since PMNs would not have to be filed for the monomers that these polymers contain. The residual monomer level limit would address any potential risk to health and the environment.

*Response.* Imported polymers are being treated the same under this exclusion as polymers manufactured in the United States. As stated above, the Agency wants to be able to assess new monomers and reactants if present as residuals. Further, the Agency has not considered setting a specific level for residuals nor concluded that polymers made with presently unknown monomers (i.e., chemicals not on the Inventory or exempted) will not present an unreasonable risk to health or the environment.

(e) *Exclusion of water-absorbing polymers with number-average MW equal to or greater than 10,000 daltons.* The final rule excludes from the exemption water-absorbing polymers having MW of 10,000 daltons or greater (§723.250(d)(5)). In the proposal, EPA had defined a water-absorbing polymer as a polymeric substance that, either in whole or in part, increases its volume when in contact with water. Numerous comments were received by the Agency concerning this definition and the MW restriction. Commenters argued that this restriction represented a very narrow approach by the Agency since it was based on the TSCA section 8(e) study, designated 8(e)–1795 and FYI–470, on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons. The section 8(e) data on the toxicity of the water-absorbing polyacrylate polymer included a 1-year chronic inhalation study, a 2–year chronic/oncogenicity study, and a

subchronic inhalation study. As discussed in the 1993 proposal, preliminary data from the 2–year chronic inhalation study reported squamous cell carcinoma and bronchio-alveolar carcinomas. The exposure concentrations were 0.05, 0.2, and 0.8 mg/m$^3$. Preliminary pathology reports state that cancer was observed in the two highest concentrations. Since the 1993 proposal, the final report on the 2–year chronic inhalation study has been received and reviewed by the Agency. The final report confirms the preliminary conclusions that under the conditions of the study, the water-absorbing polyacrylate polymer was carcinogenic to F344 rats, inducing lung tumors (bronchiolar/alveolar adenomas and adenocarcinomas) in both males and females. Statistically significant increased incidences of lung tumors were seen in both male and female rats exposed to 0.8 mg/m$^3$ of the polymer. The tumor incidences in males and female rats also showed significant trends as analyzed using the Logistic Regression Test. At the present time published Agency guidelines state that cancer may be a non-threshold effect, i.e., that dose is cumulative over a lifetime (see Guidelines for Carcinogen Risk Assessment, 51 FR 33998, September 24, 1986 and Risk Assessment Guidelines of 1986, Document No. EPA/600/8–87/045). Consequently, EPA has excluded such polymers from the exemption and will review them in the full PMN process to ensure that they do not present an unreasonable risk of injury to human health or the environment. The subject polymer evaluated in the study has no reactive functionalities and no residuals below 1,000 daltons, conditions which might have excluded it from this exemption, and, if present, could have played a role in the reported carcinogenicity. In the absence of these factors, the Agency concluded that the water-absorbing properties of the polymer may have played a role in the reported carcinogenicity findings. The Agency intends to keep abreast of the scientific findings related to the inhalation toxicity of water-absorbing high MW polymers, which for purposes of this rule means polymers with MW equal to or greater than 10,000 daltons, and will consider modifying these conclusions as the data so warrant.

The Agency examined more closely its own databases to determine the MW range for water-absorbing polymers and their water-absorbing capabilities. The polymer that was the subject of the section 8(e) report is a so-called ''super absorbent'' material of the type used primarily in applications such as disposable diapers and paper towels. It is the Agency's understanding that to be applicable for these types of uses, the polymers must absorb at least 60 – 100 times their weight of water. The Agency also has observed that these polymers have molecular weights (MW) in the 1 million dalton range. The Agency recognizes that although many other high MW polymers absorb water to some extent, they do not belong to the class identified as ''super absorbent.'' To the Agency's knowledge, data showing adverse lung effects which include oncogenicity do not exist on other than the single high MW ''super absorbent'' type polymer that was the subject of this section 8(e) study. Based on the review of this polymer, the Agency, at this time, is still unable to establish an exact MW limit for water-absorbing polymers likely to cause effects similar to those reported in the section 8(e) study, but believes that it is reasonable to set the number-average MW exclusion for water-absorbing polymers at 10,000 daltons. Based on EPA's professional judgment, the Agency believes that a MW of 10,000 daltons is a reasonable value where absorption is slow enough that a compound can be considered to persist in the lung. In addition, this MW is two orders of magnitude less than the MW of the tested polymer. The Agency believes that polymers with a number-average MW less than 10,000 daltons, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

In response to comments requesting a definition of ''water absorbing'' that more accurately bounds the category of polymers of concern, EPA has defined a ''water-absorbing polymer'' as a polymer that is capable of absorbing its weight of water. Although the tested polyacrylate polymer absorbs 100 times its weight of water, the Agency lowered the threshold for exclusion in this rule to ''absorbing its weight of water'', a threshold which is 2 orders of magnitude less than that of the tested polymer. The hundredfold difference in water absorption is believed to be appropriate based in part on the limited data, duration of the studies, effects noted, dose levels at which effects were seen, extrapolation from animal to humans, and the professional judgment of EPA experts.

*Comment.* Monsanto comments that the definition of water-absorbing is entirely too broad. Nearly all polymers will absorb some minute amount of water which will alter its volume if the measurements are precise enough. A better approach might be to exclude from the exemption polymers that will absorb more than 20 percent of their weight of water.

*Response.* The Agency agrees that the definition in the proposal, which defined a water-absorbing polymer as any polymeric substance that, either in whole or in part, increases its volume when in contact with water, was too broad and has narrowed the definition.

*Comment.* 3M states that the water-absorbing exclusion is based on a single section 8(e) report on a polyacrylate polymer with a MW of greater than 1 million daltons. While 3M understands the Agency's desire to develop an excluded class with an apparent safety factor in terms of MW, the company asks EPA to better define water-absorbing and review industry and scientific data to restrict the exclusion to water-absorbing polymer classes and MW ranges of true concern.

*Response.* As discussed above, based on the limited data received by EPA, the Agency was unable to establish an exact MW limit but believes it is reasonable to set the MW exclusion at 10,000 daltons.

3. *Elimination of specific exclusions contained in the 1984 exemption.* No comments were received on the Agency's proposal to remove three of the exclusion criteria present in the 1984 exemption including (a) polymers containing less than 32 percent carbon, (b) biopolymers, and (c) polymers manufactured from reactants containing halogen atoms or cyano groups. Therefore, these restrictions have been deleted from the final rule as proposed. Further discussion of this issue is contained in the proposed rule.

4. *Exemption criteria.* The Agency is amending the exemption criteria for polymers with MW of 1,000 daltons or greater by establishing two MW ranges with restricted oligomer content. Section 723.250(e)(1) sets out exemption criteria for polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons, while §723.250(e)(2) sets out criteria for polymers with number-average MW equal to or greater than 10,000 daltons. The exemption criteria for polyester polymers manufactured using certain specified precursors have been retained and redesignated at §723.250(e)(3).

Under the final rule, polymers eligible for exemption include the following:

a. *Polymers with number-average MW equal to or greater than 1,000 and less than 10,000 daltons.* Section 723.250 (e)(1) exempts polymers with number average MW equal to or greater than 1,000 and less than 10,000 daltons (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000) provided the polymer

also meets the following criterion: the polymer can not contain reactive functional groups except as specified in paragraph (e)(1)(ii).

i. *Restrictions on number average MW and oligomer content.* As discussed in the proposal, a chemical must be absorbed by an organism in order to cause an adverse health or ecological effect, other than direct contact effects; further, the ability of a molecule to pass through membranes and therefore be absorbed by organisms generally decreases with increasing MW (size).

Based on these principles, the Agency concluded that low MW species content provides an appropriate indication of the concerns that EPA has for polymers, namely, the content of potentially absorbable low MW compounds. As was proposed, the final rule includes restrictions on the percentage of low MW components directly derived from the monomers or other reactants for §723.250(e)(1) polymers. The criterion requires that oligomer content be less than 10 percent below MW 500 and less than 25 percent below MW 1,000.

Under the final rule, companies are free to manufacture any exempted polymer with any residual reactant content desired, as long as the percentages of low MW species do not exceed the levels specified in the exemption criteria.

*Comment.* SPI commented that number-average MW is a poor criterion for determining the amount of low MW oligomers present, and that the weight percentages of material with MW below 500 and 1,000 daltons are a better indicator of concern.

*Response.* While the Agency agrees that the number-average MW is by itself a less than perfect measure of the amount of low MW species present, a high statistical correlation of the two values was established by EPA in the course of preparing the criteria for the 1984 exemption, and EPA's experience since then has reinforced the correlation. In addition, the most frequently used method for determining the number-average MW, size-exclusion chromatography, also yields the percentages of material in given MW ranges. It should also be noted that because the Agency has concerns for possible lung effects associated with certain water-absorbing polymers with MW greater than 10,000 daltons, determination of number-average MW is needed for more than one criterion.

ii. *Allowable reactive functional groups.* The final rule excludes from eligibility under the §723.250(e)(1) criterion certain polymers that contain reactive functional groups (groups that are intended or can reasonably be anticipated to undergo further reaction). The final rule also amends certain restrictions in the 1984 exemption.

As discussed in the proposal, polymers that contain reactive functional groups may be capable of reacting with tissues or other chemical constituents of living organisms. Absorption of polymers containing reactive functional groups is also plausible since reactive groups can cause sufficient irritation to disrupt normal cell membrane barriers and facilitate penetration.

There are no restrictions on polymers containing certain reactive functional groups that generally lack reactivity in biological settings. Under §723.250(e)(1)(ii)(A), polymers containing only the following reactive functional groups remain eligible for the exemption without restrictions on equivalent weight: carboxylic acid groups, aliphatic hydroxyl groups, unconjugated olefinic groups that are considered ''ordinary'' (i.e., not specially activated either by being part of a larger functional group, such as a vinyl ether, or by other activating influences, for example, strongly electron-withdrawing sulfone group with which the olefinic groups interact), butenedioic acid groups, and conjugated olefinic groups in naturally-occurring fats, oils, and carboxylic acids.

Certain other functional groups are also implicitly permitted. Obviously, carboxylic esters, ethers, amides, urethanes, and sulfones are among them, although not listed above, because polyesters, -ethers, -amides, -urethanes, and -sulfones are among the types of polymers allowed under the exemption. As long as these groups have not been modified to enhance their reactivity (for example, dinitrophenyl esters of carboxylic acids would be considered reactive; see also the related discussion of ''ordinary'' above), they are assumed not to be reactive. Please consult the draft technical guidance document for further discussion of this issue.

Further, as discussed in the proposal, EPA believes that the following groups generally lack or have low reactivity in biological settings and has therefore included them in §723.250(e)(1)(ii)(A): blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except reactive halogen-containing groups such as benzylic or allylic halides).

iii. *Allowable equivalent weights for other reactive functional groups.* In the 1984 exemption, the Agency established equivalent weight criteria which allowed low concentrations of reactive functional groups to be present in the polymer molecules. At that time EPA believed that a level of less than 1 gram-formula weight of reactive functional groups in 10,000 grams of polymer was sufficient to ensure that the reactive functional group was substantially diluted by polymeric material. Based on the Agency's experience in reviewing polymers since the 1984 exemption was promulgated, EPA now believes that the reactive functional group equivalent weight can be lowered accordingly, because of EPA's lower level of concern. For example, data generated by companies through the PMN program (either as section 5(e) testing or via voluntary programs) and reviewed by EPA now indicate that epoxy resins with epoxide equivalent weights greater than 800 are negative in the Ames assay; and numerous so-called ''engineering'' plastics containing substantial concentrations of anhydride functional groups derived from maleic anhydride are essentially inert to water and other reagents that might ordinarily react with them by virtue of the overall insolubility and hydrophobicity of the polymer. The final rule establishes equivalent weights of 1,000 and 5,000 daltons for specific reactive functional groups, as discussed below.

Section 723.250(e)(1)(ii)(B) sets forth allowable equivalent weights at 1,000 for the combined weight of certain polymer reactive functional groups (other than those of lower concern identified in §723.250(e)(1)(ii)(A), which are not restricted), based on the Agency's lower level of concern for these reactive groups. These groups will include the following: acid halides; acid anhydrides; aldehydes; hemiacetals; methylolamides, -amines or -ureas; alkoxysilanes with alkoxy greater than $C_2$; allyl ethers, conjugated olefins; cyanates; epoxides; imines; and unsubstituted positions ortho or para to phenolic hydroxyl.

All other reactive functional groups (except those that are unrestricted) are required at §723.250(e)(1)(ii)(C) to have a combined equivalent weight of 5,000 daltons or greater, including pendant acrylates and methacrylates, aziridines, carbodiimides, halosilanes, hydrosilanes, hydrazines, isocyanates, isothiocyanates, alpha or beta lactones, methoxy or ethoxy silanes, vinyl sulfones or analogous compounds, and any other reactive functional group not listed at §§723.250(e)(1)(ii)(A) or (B).

EPA requested comment on the complexity of this specific provision and was concerned that smaller businesses or those with limited technical resources would have trouble interpreting the exemption criteria for reactive functional groups, if the groups

are complicated, and might choose not to use the exemption for eligible polymers. Such persons would, of course, have the option of using 5,000 as the equivalent weight if they are uncertain whether a particular reactive functional group is listed under §§723.250(e)(1)(ii)(A) and (B). No adverse comments were received on the Agency's specific approach. Therefore, the final rule includes this provision as proposed.

EPA believes that restrictions on reactive functional groups are not necessary for polymers with a number-average MW equal to or greater than 10,000 because, as stated in the proposed rule, polymers of this size are not expected to be absorbed by biological systems.

b. *Polymers with number-average MW equal to 10,000 daltons or greater.* Section 723.250(e)(2) exempts polymers with number average MW equal to 10,000 daltons or greater (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000). The Agency established this separate category for polymers with number-average MW equal to or greater than 10,000 daltons because high MW polymers are not expected to be readily absorbable by any route of exposure because of their molecular size. As stated earlier in this unit, polymers with a number-average MW of less than 10,000 daltons, in general, can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards.

In the 1993 proposal, EPA proposed as a condition of the exemption that the submitter evaluate the potential for inhalation exposure to respirable particles of water-insoluble polymers and, if warranted, provide adequate notification and appropriate protective measures to exposed workers. At that time, EPA had expressed concern for potential health effects that may be caused by inhalation of respirable particles of water-insoluble high MW polymers of 10,000 daltons or greater based on section 8(e) data which are discussed below. In the 1984 exemption, the Agency also discussed a similar concern for potential health risks but in the preamble to the 1984 final polymer exemption rule, EPA concluded that such exposure to polymer particulates was generally limited and expected to be of low risk [49 FR 46082, November 21, 1984]. Following publication of the 1993 proposal, the Agency received numerous adverse comments regarding EPA's proposed conditions on this category of high MW polymers which, as a class in general, is considered to be one of the safest categories of chemicals in commerce.

To address these comments, the Agency reviewed in detail its experience with polymers in the New Chemicals Program and in particular re-examined its database of polymers submitted under the 1984 polymer exemption rule to determine what percentage of these polymers afforded the potential for inhalation exposure. In particular, the Agency examined 553 polymer exemption notices received since 1991 and found that of the 18 polymers that fit the proposed exemption criteria for water-insoluble polymers, only 1 polymer presented a possible inhalation risk based on particle size and use considerations. The exemption application for this polymer was converted to a PMN to allow a full review in the 90–day PMN review process. The Agency's review did not result in a finding that the manufacture, processing, use, or disposal of the polymer ''may present'' an unreasonable risk to human health and the polymer was dropped from further review. In view of the Agency's experience over the last 3 years and its judgment that exposure patterns will not change appreciably, the Agency has concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers, as a class, will result in unreasonable risk of injury to human health or the environment. In the 1993 proposal, EPA stated that it received TSCA section 8(e) data, designated 8(e)–0668, reporting irreversible lung damage linked with inhalation of respirable particles of water-insoluble polymers with MW of 70,000 daltons or greater. Of these data, the central study was contained in section 8(e)–0668. The subject chemical was a toner used in copy machines. This submission included chronic inhalation studies in both rats and hamsters and concluded that both species suffered similar lung damage when respirable dusts were inhaled at levels that also produced ''lung overloading.'' In addition, studies were performed on clearance rates that demonstrated that impaired clearance occurred without regard to particle concentration once overloading had taken place. Other section 8(e) data on water-insoluble high MW polymers did not include chronic studies, but were shorter term studies that resulted in a similar type of lung damage. The 1993 proposal contains a full discussion concerning these data and the issues the data raised for the Agency.

In the 1993 proposal, EPA proposed an exposure level for respirable polymer dust of 0.5 mg/$m^3$ as an 8–hour time weighted average to provide an adequate margin of safety given the Agency's interpretation of the section 8(e) data and believed that this level was technologically feasible. EPA assumed that most companies would be in compliance with the Occupational and Safety and Health Administration's (OSHA) existing Permissible Exposure Limit (PEL) for respirable Particulates Not Otherwise Regulated (PNOR), as an 8–hour time weighted average of 5 mg/$m^3$ and that EPA's proposed lower limit of 0.5 mg/$m^3$ could be attained through additional engineering controls, work practices, good housekeeping practices, or different respiratory protection. While EPA is not imposing conditions on this category of high MW polymers as part of the final rule, the Agency believes that manufacturers and users of polymers and chemical substances, in general, where feasible should take appropriate action to mitigate exposure to all respirable particles. In addition, EPA has raised the general issue of particulate inhalation exposure to the attention of the ''ONE'' Committee, which is an intra-agency committee of OSHA, National Institute for Occupational Safety and Health, the Mine Safety and Health Administration, and EPA representatives, formed in 1988 as a focal point for coordination and information exchange related to occupational issues. When further research is conducted in the area of particulate inhalation exposure and the data gaps are addressed (see ''Inhalation Toxicity of High Molecular Weight Polymers, Workshop Proceedings, by Technical Resources, Inc., 1993), EPA may refine the eligibility criteria further for the polymer exemption or may impose new restrictions, if necessary.

*Comment.* The American Fiber Manufacturers Association (AFMA) comments that it was unwarranted to impose restrictive evaluation criteria for products based on the limited data available. AFMA stated that since EPA has already restricted the introduction of polymers containing chemically reactive groups and water-absorbing polymers, the remaining polymers should not present any special hazard dependent solely upon MW. This restriction should be eliminated.

*Response.* As stated previously, EPA has concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers as a class will result in unreasonable risk of injury to human health or the environment. Consequently, the final rule does not impose restrictive evaluation criteria on this class of polymers.

*Comment.* AFMA commented that the 1991 EPA workshop on Inhalation Toxicity of High MW Polymers recommended against using MW as a predictor of inhalation toxicity, stating that the workshop concluded that knowledge of MW alone does not provide enough information about the material for use in predicting inhalation toxicity and that lung toxicity seen in animals with excessive lung burdens of high MW polymers is likely the result of a particle overload mechanism. The Workshop did not believe there is a relationship between MW and particle overloading that would justify use of MW for the proposed criteria determinant.

*Response.* The Workshop was advisory in nature and the opinions of the participants are not necessarily those of EPA. Nevertheless, EPA has reconsidered its own experience with such polymers and the available data for water-insoluble polymers and concluded that the proposed MW criteria were unduly limited and its reliance on MW as a restricting factor is unnecessary. Therefore, the limitation on water-insoluble polymers has been removed.

*Comment.* AFMA cited a report (attached to AFMA's comments) where polypropylene fibers were tested in subchronic inhalation studies. Under the conditions of the study, these high MW water-insoluble polymers are not fibrogenic, yet would be needlessly and improperly regulated by EPA as proposed.

*Response.* The report cited by AFMA is a 90–day inhalation study of polypropylene fibers, not respirable particulate dust. The toxicity of fibers involves factors such as length and diameter which are unique to fibers and not applicable to respirable dust. The study therefore, has limited relevancy to the polymer exemption criteria.

*Comment.* AFMA states that data filed under TSCA section 8(e) HQ– 0487–0668 and section 8(e) HQ–0983–0492 S both involve polymers which fall below the proposed 10,000 MW cut-off. Both polymers appear to be biologically-active (acutely toxic) with reactive functional groups associated with them, rendering each ineligible for PMN exemption regardless of their MW. In both cases, MW would be an inappropriate primary determinant of toxicity.

*Response.* EPA agrees that these polymers would not be eligible for the exemption under the criterion which restricts reactive functional groups. Further, these studies were not used by the Agency in assessing concerns for high MW water-insoluable polymer.

*Comment.* AFMA stated that data on the pulmonary toxicity of xerographic toner, as filed in TSCA section 8(e)HQ–0487–0668, should not be used in determining polymer toxicity criteria. The ''toner'' tested was a mixture of materials, not a single polymer. Approximately 10 percent of this mixture is reported to be carbon black. EPA should defend its rationale for including this mixture in the database for water-insoluble polymers. AFMA contends it is inappropriate for EPA to restrict use of an entire class of polymers based on extrapolation of the results of a toxicity study on a mixture.

*Response.* It is EPA's understanding that the carbon black was encased in the polymer and therefore not bioavailable. Only the polymer was available for contact with the experimental animal. Thus EPA does not consider the carbon black to be a factor in the toxicity described in TSCA 8(e)HQ487–0668. As discussed previously in this unit and in the preamble to the proposed rule, EPA did not rely solely on this particular study but also considered other data albeit shorter term studies. Based on EPA's experience in evaluating polymers as discussed above, EPA has decided to proceed as described in this rulemaking.

*Comment.* AFMA states that the inhalation data on super-absorbent polymers are inappropriate for use in determining exemption criteria in the water-insoluble polymer section of the proposed rule. It appears that TSCA section 8(e) filings reporting pulmonary toxicity [as reported hazardous in 8(e)HQ–0382–0438 S, section, 8(e)HQ–0683–0484 S, 8(e)HZ–1291–1795, and FYI–OTS–1285– 0470] were used by EPA to propose conditions on water-insoluble polymers as part of the exemption. However, EPA has not provided relevant data to show that similar pulmonary toxicity would occur in water-insoluble and water-absorbent polymers. Accordingly, AFMA believes it inappropriate for EPA to use toxicity data obtained from water-absorbent polymers in a manner that affects the exemption eligibility of water-insoluble polymers. AFMA believes that in the absence of adequate supporting data, these polymers should be treated as nuisance particulates.

*Response.* EPA agrees that use of the data on super-absorbent polymers are not appropriate for use in determining exemption criteria for water-insoluble polymers. Further, in its proposal, EPA did not use the data on super-absorbent polymers in determining exemption criteria of water-insoluble polymers.

*Comment.* Elf Atochem commented that by setting a 0.5 mg/m$^3$ dust concentration level (a factor of 10 less than OSHA's PEL of 5 mg/m$^3$), the acceptability of new polymers would be greatly reduced. To maintain consistency between Federal agencies, EPA should raise its workplace exposure level to be consistent with the OSHA standard. In addition, Exxon commented that the imposition of inhalation standards that are inconsistent not only with OSHA PEL levels but with existing polymers creates yet another disincentive for pursuing polymer exemptions.

*Response.* EPA agrees that consistency among Federal regulations regarding workplace exposure is desirable. EPA has elected not to establish an exposure limit for respirable particles at this time for reasons given above. However, TSCA provides authority to ''protect human health and the environment'' and authorizes EPA to establish limits on worker exposure for new chemical substances where such exposure may present an unreasonable risk of injury to human health. EPA has removed the proposed limitations on water-insoluble polymers for the reasons stated above. However, the Agency believes that manufacturers and users of polymers and other chemical substances should take appropriate actions to mitigate exposure to all respirable particles as part of good industrial hygiene practices.

c. *Polyester polymers manufactured solely from reactants listed at §723.250(e)(3).* The Agency has had sufficient experience in reviewing polymer exemption notices for polyester polymers that are prepared using reactants specified in the 1984 exemption rule that the Agency does not believe such polymers present an unreasonable risk of injury to human health or the environment. Accordingly, these polyester polymers continue to be eligible for exemption. As discussed in the 1993 proposal, EPA is deleting footnote No. 2 in §723.250(e)(3), which is no longer applicable, because under the final rule all monomers and reactants used to manufacture the polymer must be on the TSCA Inventory.

There are many polyester polymer reactants that are not included in the 1984 polyester exemption list, and the Agency requested comments on expanding the list of potential polyester reactants. Several companies identified reactants for Agency review. Agency scientists, using structure-activity relationships and their expert judgment, evaluated the candidate reactants and identified no health or ecological concerns for these reactants. Based on

the Agency's evaluation, the following substances have been added to Table 1 of this regulation: canola oil; castor oil fatty acids; dehydrated castor-oil fatty acids; $C_{16–18}$ and $C_{18}$–unsatd. fatty acids; $C_{18}$–unsatd. fatty acids, dimers; oxidized linseed oil; conjugated sunflower oil fatty acid; $C_{16–18}$ and $C_{18}$–unsatd. glycerides; butanedioic acid, dimethyl ester; butanedioic acid, diethyl ester; pentanedioic acid, dimethyl ester; pentanedioic acid, diethyl ester; hexanedioic acid, dimethyl ester; hexanedioic acid, diethyl ester; heptanedioic acid; heptanedioic acid, dimethyl ester; octanedioic acid; octanedioic acid, dimethyl ester; nonanedioic acid, dimethyl ester; nonanedioic acid, diethyl ester; decanedioic acid, dimethyl ester; undecanedioic acid; dodecanedioic acid; diethyl terephthalate; dimethyl terephthalate; dimethyl isophthalate; 2-methyl-1,3-propanediol; diethylene glycol.

One reactant, terephthaloyl chloride [CASRN: 100–20–9], was not approved for inclusion in the list of reactants because the Agency does not believe it has had sufficient experience with the reactant or ones of this type. The Agency has decided not to include the following substances in the list of eligible reactants for polyester because they are not on the TSCA Inventory: heptanedioic acid, diethyl ester [CASRN: 2050–20–6]; octanedioic acid, diethyl ester [CASRN: 2050–23–9]; undecanedioic acid, dimethyl ester [CASRN: 4567–98–0]; undecanedioic acid, diethyl ester [CASRN: 22543–29–9]; dodecane-dioic acid, dimethyl ester [CASRN: 1731–79–9]; dodecanedioic acid, diethyl ester [CASRN: 10471–28–0].

*Comment.* CMA commented that the list of eligible reactants for polyester polymers under the 1984 rule is extremely limited, that many analogous polyols and acids on the Inventory are worthy of inclusion, and that in practice polyesters are often made from esters rather than acids. CMA, Arco, and Eastman proposed expanding the list to include a number of additional substances. CMA, Arco, Dow, Quantum, and Rohm Haas recommended that EPA develop and publish procedures for periodic updating of the ''approved'' reactants list.

*Response.* The Agency agrees with the general tenor of the comments and notes that the original ''approved'' reactants list was compiled from suggestions submitted by manufacturers, after review by Agency scientists. The Agency believes that it would be appropriate in the future to propose amendments to this section to allow expansion of the list of eligible precursors, when additional candidates have been identified. To support requests for additional reactants, petitioners should provide health and environmental effects information on the candidate reactants, which must be already on the Inventory.

5. *Determination of eligibility.* The Agency believes that, when a polymer is manufactured under the terms of the exemption, it is reasonable for the manufacturer to take on a greater burden to demonstrate eligibility than under the 1984 exemption because EPA is eliminating its premanufacture review of these polymers. Under the 1984 exemption, the Agency did not require that submitters perform analytical measurements of the physical and chemical properties of polymers, but allowed manufacturers to determine compliance with the exemption conditions on whatever basis the manufacturer deemed appropriate. These included using past experience by correlating observed or measured values of the properties of similar polymers to the polymer in question, using stoichiometric relationships based on knowledge of the starting materials and expected reactions, or using knowledge of process and purification steps.

Under the final rule, the Agency will no longer receive and review exemption notices prior to manufacture or import of exempted polymers nor verify a polymer's eligibility under terms of the exemption. Consequently, the manufacturer must take the steps necessary to ensure that a chemical substance is eligible for exemption. Therefore, the Agency is requiring that a manufacturer generate appropriate records and data to demonstrate that a substance meets the eligibility criteria set forth at §723.250(e) to ensure compliance with the exemption.

The final rule requires manufacturers of exempt substances at §723.250(e)(1) and (e)(2) to generate appropriate analytical data, if applicable, or theoretical calculations if it can be documented that an analytical determination can not be made or is not necessary, to demonstrate that the polymer meets the minimum number average MW and corresponding restrictions on oligomer content. The Agency has not specified a particular analytical method to demonstrate compliance with the eligibility criteria, but allows the manufacturer to use an appropriate method of analysis that generates the data to verify compliance with the criteria, such as gel permeation chromatography or vapor pressure osmometry. Performance of such analysis is required prior to commencement of manufacture or import in accordance with the exemption. A number of commenters stated that manufacturers were concerned about the requirement to generate updated analyses and documentation to demonstrate that a given polymer continues to qualify for the exemption whenever a manufacturing process change occurs that could possibly cause the polymer to not meet the exemption criteria. Although the manufacturer is not required to generate updated analytical data on the exempted polymer under the final rule, EPA expects that if conditions, such as reaction temperature or sources for feedstock change, manufacturers will take steps to determine the effect of such a change so as to ensure continued compliance with the exemption. Obviously, if a new chemical substance is generated during subsequent manufacture, the manufacturer would be required to be in compliance with all the section 5 provisions.

Manufacturers are expected to follow the provisions of the exemption for research and development (R&D) activities during the period of evaluation of eligibility of a substance under the exemption criteria prior to actual manufacture under the exemption provisions. Such R&D activities will be subject to the R&D procedural and recordkeeping provisions in the PMN rule at 40 CFR 720.36 and 720.78, respectively. To enhance compliance with the criteria, EPA is publishing a draft technical guidance document for this rule and will hold a series of workshops on these criteria to facilitate understanding and compliance with this exemption.

6. *Reporting requirements.* The proposed rule would have required that a notice be filed with EPA within 30 days after manufacture or importation for commercial purposes instead of 21 days prior to manufacture of an eligible polymer as under the current exemption. The Agency also solicited comment on a ''no reporting'' option for this category of substances. In light of the Agency's determination that this class of polymeric substances will not present an unreasonable risk of injury to human health or the environment if manufactured under the criteria specified in this rule, and in the interests of reducing the reporting burdens for both industry and EPA, the final rule will require only annual reporting on polymers for which manufacture or importation under terms of the exemption has commenced for the first time during the preceding

calendar year. This reporting requirement will allow EPA inspectors to determine which companies have manufactured polymers under the exemption thereby allowing them to ensure compliance with the provisions of this rule during site inspections. The final rule requires that a company file a polymer exemption report to EPA, postmarked by January 31, that includes all chemical substances for which manufacture or importation commenced under the terms of the exemption during the preceding year [§723.250(f)]. Such report must include submitter identity information including company name and address, a technical contact (a person available in the United States) and telephone number, and the number of eligible substances for which manufacture commenced under the terms of the exemption during the previous calendar year.

A company may decide to report by plant site instead of submitting a single company report which consolidates reporting on the number of polymers manufactured for the first time under terms of the exemption; however, reporting on the number of polymers manufactured under the exemption should not be duplicated. EPA believes that an annual report on the number of polymers being manufactured for the first time under terms of the exemption will alleviate industry's reporting burden by reducing the information submission requirements while providing EPA with a direct mechanism for monitoring compliance. This type of reporting will also provide a useful measure of the utility of the polymer exemption.

7. *Chemical identity information.* As discussed above, an exemption notice is no longer required under the final rule. However, manufacturers of polymers under terms of the exemption are required to maintain certain information at the site of manufacture, including chemical identity and a structural diagram, to the extent known or reasonably ascertainable, as specified at §723.250(g). The 1993 proposal, if adopted, would have required a Chemical Abstracts (CA) Index Name or CA Preferred Name, CAS Registry number (or EPA Inventory accession or PMN number) for each reactant used at greater than 2 percent (by weight) to manufacture the polymer, or alternatively, incorporated at greater than 2 percent (by weight) in the polymer. Although the Agency encourages the use of CA nomenclature, the final rule does not require CA nomenclature since polymers manufactured under terms of the exemption will not be placed on the TSCA Inventory. For purposes of determining chemical identity, the manufacturer may determine whether a reactant is used or incorporated at greater than 2 percent (by weight). However, as discussed earlier in unit II B.2(d) of this preamble, reactants that introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption are not allowed. The ''two percent rule'' affects only the polymer's identity, not its eligibility under the exemption criteria.

Under the final polymer exemption rule, the manufacturer is required to maintain appropriate analytical data or other supporting information to demonstrate that the exempted polymer meets the specific number-average MW and restricted oligomer content criteria at §723.250(e)(1) or (e)(2), as discussed under unit II.B.5 of this preamble. The final rule allows the company to make the polymer with MW ranges, or residual reactant concentrations, etc., as the company desires, provided that these values fall within the exemption criteria.

8. *Certification.* The final rule retains provisions that require that the manufacturer of an exempt polymer, as of the date of first manufacture, certify that the polymer meets the definition of a polymer, is not specifically excluded from the exemption, and meets the conditions of the exemption [§723.250(h)(3)]. Certification statements must be retained with the other required records at the manufacturing or import site.

9. *Recordkeeping.* EPA believes that recordkeeping requirements are an essential component of an effective exemption enforcement program and has retained this provision in the final rule at §723.250(j), while including some additional provisions proposed in 1993 since EPA will no longer receive exemption notices. These additional provisions include certification statements, chemical identity information, and analytical data, as discussed in this unit. Documentation of information would be used by enforcement personnel to determine compliance with the rule. The recordkeeping requirements have been amended to require that the manufacturer maintain certain information at the site of manufacture or the site of import.

*Comment.* Some commenters suggested that the present recordkeeping requirements for the polymer exemption would be adequate to ensure industry compliance.

*Response.* Since the Agency will not conduct any premanufacturing review of exempted polymers, EPA believes that it is important for manufacturers to develop and maintain more detailed and comprehensive records than are required by the current polymer exemption. EPA believes that the recordkeeping requirements are necessary to ensure that manufacturers are able to demonstrate compliance by documenting that the exempted polymers meet the eligibility criteria.

10. *Inspections.* The Agency will continue to periodically inspect companies to ensure compliance with TSCA section 5. Those companies with past violations may be inspected more frequently. To determine compliance with the polymer exemption, the EPA inspector will focus on the information in the company's records, including the analytical data documenting the substance's eligibility under the exemption.

11. *Deletion of proposed revocation provisions.* The 1993 proposal contained provisions to allow EPA to revoke the exemption for an exempted polymer and require a full PMN review if EPA obtains information indicating that a particular polymer or category of polymers may present an unreasonable risk of injury to human health or the environment.

The Agency has determined, for the reasons outlined below, to delete the proposed revocation provision in its entirety. When the Agency proposed amendments to the polymer rule in 1993, development of the revocation provisions was predicated on EPA's evaluation of the section 8(e) data on certain high MW water-insoluble polymers previously discussed in this unit. EPA believed it was prudent, given its evaluation of the data at the time of the proposal, to ensure it had a mechanism in place to identify eligible polymers which may pose an unreasonable risk of injury to human health or the environment. Specifically, the Agency was concerned that additional section 8(e) data or other adverse data would be received which might compromise the ability of the Agency to prevent unreasonable risk of injury to human health or the environment in a timely fashion.

The Agency received numerous comments reflecting general dissatisfaction with the proposed revocation provisions. Specifically, the comments received by the Agency, both in writing and in conjunction with the public hearing on the proposed rule, were as follows:

(1) The provisions do not provide recourse for the submitter and allow insufficient time for objections to be lodged with the Agency;

(2) The provisions will discourage many companies from developing new products;

(3) Specialty chemical companies in particular would not be as willing to develop new products under the threat that they would be banned from the marketplace;

(4) The revocation provisions of the proposal reduce the commercial acceptability of the exemption process and business managers will prefer the stability and certainty of clearance through submission of a PMN, rather than risk potential business interruptions under the terms of the proposed exemption; and

(5) The provision will threaten the utility of the entire exemption procedure as a vehicle for reducing the number of PMNs that are filed for substances that pose no reasonable likelihood of harm to health or the environment.

Based on consideration of these adverse comments and in light of the Agency's conclusion that the likelihood of eligible polymers posing an unreasonable risk is low, the Agency has determined that these provisions are not necessary to support the Agency's statutory finding that polymers manufactured under terms of the exemption will not present an unreasonable risk of injury to human health and the environment. Should evidence be received by the Agency that casts reasonable doubt on the appropriateness of a criterion or set of criteria, the Agency has other regulatory options available, such as publication of a proposed amendment to the polymer exemption rule to either refine the criteria or impose new restrictions, similar to EPA's treatment of water-absorbing high MW polymers in this rulemaking. Specifically, EPA proposed an amendment to the 1984 exemption that would exclude this category of polymers from eligibility for the exemption based on the Agency's evaluation of certain section 8(e) data as discussed in unit II.B.2(e) of this preamble. After publishing its 1993 proposal and providing an opportunity for public comment, the Agency amended the 1984 exemption in this rulemaking to exclude high MW water-absorbing polymers from eligibility. Similarly, any future proposed revisions would also be subject to notice in the **Federal Register** and comment in accordance with the Administrative Procedure Act.

12. *Inventory status of exempted polymer.* Polymers that were reviewed under the terms of the 1984 polymer exemption rule and included on the Inventory will remain on the Inventory, with the restrictions concerning low MW species content and maximum residual amounts of reactants specified for each exempted polymer still in force. Polymers manufactured under the amended exemption will not be included on the Inventory. A number of commenters argued that exempt polymers warrant inclusion on the TSCA Inventory, since customers rely on Inventory listings to confirm a product's regulatory compliance. Since the Agency will not be receiving information on the chemical identity of the exempted polymer as part of the reporting requirement, the Agency will not have a mechanism for including exempted polymers on the Inventory. However, the Agency recognizes that it is essential that manufacturers have an adequate method to assure their customers that their products are in compliance with TSCA regulations and agrees that an Inventory listing of the substance would simplify this process. Under the final rule, an exempted polymer remains a new chemical substance (although legitimately manufactured under terms of the exemption) until a PMN has been submitted for the substance and has completed the PMN review period, followed by manufacture for non-exempt commercial purpose and subsequent NOC. Nonetheless, it is current practice that manufacturers employ a variety of methods to assure customers that a chemical substance is in compliance, particularly in situations where the Agency does not include an exempted substance on the Inventory, as is the case for low volume, test marketing, and R&D substances. Since the Agency will neither be receiving notices for exempted polymers nor providing receipt numbers (similar to the status of R&D substances), manufacturers who use this exemption should rely on practices similar to ones currently used for R&D substances. These include appropriate labeling and reference to the polymer exemption rule at 40 CFR 723.250 and this **Federal Register** document. A company might also consider setting up a system for identifying exempted polymers which relates back to the exemption and use this identification code to identify polymers in any commercial activity or Material Safety Data Sheet (MSDS).

The Agency believes that use of the polymer exemption provides significant benefits to polymer manufacturers for a number of reasons discussed in this document. Moreover, polymers manufactured under this exemption have been identified by EPA as some of the least hazardous substances in commerce. In light of pollution prevention and product stewardship initiatives undertaken by the regulated community, the Agency believes that the marketing of safer chemical substances should enhance the commercial viability of these substances.

*Comment.* CMA states that customers rely on TSCA Inventory listings to confirm a product's regulatory compliance. Elf Atochem argues that inclusion on a separate list leaves the regulatory status of exempt polymers rather ambiguous.

*Response.* As discussed above, the Agency believes that manufacturers who use the exemption will be able to develop adequate methods of assuring their customers that these polymers are not only in compliance with TSCA regulations but meet the Agency's low-risk criteria.

13. *Transition period until final rule becomes effective.* The Agency will continue to accept and review polymer exemption applications under the terms of the 1984 exemption at 40 CFR 723.250 until the effective date of this final rule. No new exemption applications will be accepted after the effective date of this rule.

If a manufacturer who submitted a polymer exemption application under the 1984 exemption rule but has not yet submitted a NOC wishes to add its polymer to the Inventory, the person may submit the NOC in accordance with 40 CFR 720.102. The exempt polymer will then be listed on the Inventory with the applicable 1984 polymer exemption criteria and exemption category restrictions on residual monomers/reactants and low MW species content. The manufacturer may instead choose to manufacture under the terms of the new exemption.

## III. Response to Other Alternatives Considered

EPA requested comments and data on all aspects of the 1993 proposal, including the following specific issues discussed below:

### *Other Polymers Considered for Exemption*

1. *Polymer salts.* The Agency has also considered a proposal to exempt certain salts of polymers that are listed on the TSCA inventory but was unable to make the determination that, as a class, all of these polymers will not present an unreasonable risk of injury to human health or the environment. However, EPA believes that many individual polymer salts will be eligible for exemption under the amended criteria.

2. *Polymers containing high cationic functional group.* The Agency considered allowing, under the exemption, polymers which contain high percentages of amine (low amine equivalent weight) in their structures but decided against this approach. Accordingly, polymers with high cationic functional groups continue to be subject to the restrictions under §723.250(d)(1) for the following reason. In the past, the main concern for cationic polymers was for ecotoxicity, specifically, aquatic toxicity. There has been a significant amount of data generated by industry in response to section 5(e) consent orders or on a voluntary basis, which after EPA review, was concluded to demonstrate that for the category of polymers with a high amine or cationic content, equivalent weight of 425 daltons or less, there is sufficient mitigation of the risk, through the mechanism of dissolved-organic-carbon (DOC), to render this polymer class of low risk for ecotoxicity if used according to current standard practices. The Agency believes that these data sufficiently support the conclusion that high amine content polymers, as specified above, will not pose an unreasonable risk of injury for aquatic toxicity.

However, as discussed in the 1993 proposal, EPA received section 8(e) data on a polymer with high cationic functional group content in which test results demonstrated lethality in standard eye irritation tests in rabbits. This study has resulted in high concerns for acute lethality as demonstrated by this polymer. The polymer used in the study met all provisions of the proposed polymer exemption and would have qualified for exemption if the low cationic functional group equivalent weight (high cationic content) provision was incorporated as part of the exemption criteria. It is for this reason that EPA believes that it would be inappropriate to include the high cationic functional group content allowance in the final rule at this time and will continue to restrict these polymers under the final rule.

*Comment.* One commenter stated that the exclusion of the polymers with high cationic functional group content is based upon the assumption that all high cationic charge polymers have similar physical-chemical, steric, structural and toxicological properties and that the concern should be more focused on the class of polymers that cause the adverse effect.

*Response.* The Agency agrees that it may be more appropriate to use the definition of the class of cationic polymers to exclude the polymers of concern from the exemption in lieu of the broader-based exclusion. However, this preliminary assessment is based on section 8(e) data that are claimed as CBI. (At the time of the proposal, EPA believed that it would be able to resolve the CBI claim in a way that would allow the public an opportunity to comment on the data.) To date, the submitter of the 8(e) data has declined to rescind the CBI claim on the chemical structure despite repeated requests. Nor were publicly accessible data received during the comment period that support narrowing the category of polymers excluded from the exemption. Therefore, because the public has not had an opportunity to comment on the basis for such an exemption and in order not to delay issuance of this final rule until the CBI issues can be resolved, the Agency has elected not to include a more narrow category in this rulemaking. The Agency may continue discussions with the submitter of the section 8(e) data and amend this section as appropriate in the future.

## IV. Regulatory Analysis

### *A. Summary of Risk Assessment*

1. *Introduction.* The Agency has determined that polymers defined by the exemption criteria set forth in this rule are of low concern due to their lack of reactivity and their molecular size. These criteria have been developed based on the Agency's review of over 5,000 polymer submissions since the original polymer exemption rule in 1984 (49 FR 46066). The Agency believes that polymers eligible for this exemption are generally of low risk and that sufficient information exists on the potential risks of other polymers with certain characteristics to make them ineligible for the exemption.

2. *Approach to risk analysis.* The Agency based its risk analysis on (a) the effect MW has on the overall risk a polymer poses, (b) the specific concerns the Agency has had in the past for polymers submitted as PMNs, (c) toxicological data available on particular polymers, (d) an analysis of the Agency's database on over 500 polymers received in the last 3 years under the current polymer exemption to determine the potential for exposure to respirable particles of insoluble high MW polymers, and (e) an analysis of the Agency's experience to date in assessing potential risks of new polymers submitted as PMNs or exemption applications. The 1993 proposal contains an extensive discussion of the Agency's approach and limitations to that approach. The proposal also details EPA's extensive evaluation of ecotoxicity considerations for polymers. The discussion below is limited to an analysis of the inhalation toxicity concerns associated with exposure to respirable polymeric particles.

3. *Inhalation toxicity.* As discussed in the 1993 proposal, health concerns exist for certain types of polymers that have been found to produce lung toxicity if inhaled. Based on section 8(e) data on a water-absorbing polyacrylate polymer with a MW in excess of 1 million daltons that indicated a potential oncogenic (cancer) concern for this type of high MW water-absorbing polymer, the Agency has excluded water-absorbing polymers of MW equal to or greater than 10,000 daltons from the exemption. Other section 8(e) data on high MW water-insoluble polymers were indicative of a lung-overload phenomenon and did not demonstrate any carcingenic response under conditions of the studies. Please consult units II.B.4(b) and IV.C of this preamble and the preamble to the proposed rule for a full discussion of this issue.

The final rule does not impose a condition in the exemption on high MW water-insoluble polymers linked to the evaluation of the potential for inhalation exposure to respirable particles as was contemplated in the 1993 proposal. Based on numerous comments received on these proposed limitations on high MW water-insoluble polymers, the Agency reevaluated the existing scientific data and its own experience in reviewing the potential for inhalation exposure to such polymers submitted under the current polymer exemption. Based on these analyses, EPA has determined that there is an exceedingly low probability that potential inhalation exposure to high MW water-insoluble polymers, as a class, will result in unreasonable risk of injury to human health or the environment. This conclusion reaffirms EPA's finding at the time of promulgation of the 1984 exemption that exposure to polymer particulates was generally limited and expected to be of low risk.

Based on over 15 years experience with polymers, EPA considers that the criteria set forth in this exemption define polymers of low-concern and that the potential risk from respirable particles of high MW water-insoluble polymers is low. Therefore, the Agency has not retained in this rulemaking the requirement that companies evaluate the potential for inhalation exposure to respirable particles for this specific category. However, EPA believes that as part of responsible health and safety and product stewardship programs in general, manufacturers and their customers should be aware of the

potential for toxicity from any respirable particle and when producing or using such materials take measures to keep their workplace free of respirable dusts of any type.

*B. Summary of Regulatory Impact Analysis*

EPA has evaluated the potential costs of the final amendments for potential manufacturers of exempt polymers. The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50594B).

The regulatory impact analysis estimates the costs and benefits attributable to the final regulation. In this case, the analysis also contains estimates for the three additional final amendments to section 5 regulations that are published elsewhere in this **Federal Register**. These rules amend the PMN regulations, the Low Volume Exemption Rule, and the Expedited Process for Issuing Significant New Use Rules. Because these final regulations are amendments to current regulations, the costs and benefits are incremental and estimate the effect of the final rule with respect to the current regulations.

The costs and benefits associated with the polymer exemption amendments are partially quantified; many of the benefits are unquantified but are expected to be of significant importance as discussed later in this unit. Considering only the quantified costs and benefits, there is a cost saving. Since the number of section 5 submissions received by the Agency varies, this analysis used three scenarios, assuming either 1,000, 2,000, or 3,000 annual submissions, to reflect the expected range of submissions. The savings as compared to the current regulation are estimated to be:

| Annual Number of Submissions | Annual Cost Savings ($ Million) | |
|---|---|---|
| | Industry | Government |
| 1,000 ..... | 4.7 – 6.8 | 0.2 – 0.4 |
| 2,000 ..... | 9.4 – 13.5 | 0.4 – 0.8 |
| 3,000 ..... | 14.2 – 20.3 | 0.6 – 1.2 |

The industry costs associated with these amendments are labor requirements for preparation of an annual report and recordkeeping costs. Reporting and delay costs are eliminated due to the elimination of submission requirements. The user fee is no longer applicable since exemption notices will not be required. Moreover, the amendment makes a larger number of polymers eligible for the exemption, further reducing the reporting and delay costs for those substances.

The unquantified benefits include increased flexibility for industry due to the expanded exemption criteria. In addition, Agency resources will be focused on those substances more likely to pose an unreasonable risk.

*C. EPA's Approach to Making the No Unreasonable Risk Finding*

1. *Statutory background.* Pursuant to section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance, or any combination of such activities, will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical may be taken for a category of such substances.

While TSCA does not contain a definition of ''unreasonable risk,'' the legislative history indicates that the determination of unreasonable risk requires a balancing of the considerations of both the severity and the probability that harm will occur against the effect of the final regulatory action on the availability to society of the benefits of the chemical substance [House Report 1341, 94th Cong., 2nd Session, 14 (1976)]. This analysis can include an estimate of factors such as market potential, the effect of the regulation on promoting or hindering the economic appeal of a substance, environmental effects, and many other factors which are difficult to define and quantify precisely. EPA may rely not only on data available to it, but also on its professional judgment. Congress recognized that the implementation of the unreasonable risk standard ''will vary on the specific regulatory authority which the Administrator seeks to exercise'' [Ibid.]

2. *EPA's approach.* In determining whether the category of polymeric substances being considered for exemption presents an unreasonable risk of injury to human health or the environment, the Agency considers more than just the inherent risks presented by the overall category of polymers. The Agency also considers how the criteria of the exemption maintain full regulatory oversight on higher risk polymers while promoting the manufacture of low-risk polymers by providing regulatory relief for them.

The amended polymer exemption modifies the requirements for eligible polymers from the current polymer exemption requirements and the general PMN requirements. EPA therefore compares the risks posed by the substances being considered for an amended exemption with the risks which would have resulted from the same category of substances, if that category of substances had been subject to full notice submission requirements and 90–day EPA review or, where applicable, the reporting requirements of the current polymer exemption and the abbreviated 21–day review. Certainly it is not possible to eliminate all risks associated with the manufacture, processing, distribution in commerce, use, and disposal of any new chemical substance nor was this Congress' intent. The standard embodied by a section 5(h)(4) exemption does not require the Agency to ensure absolute safety from the activities associated with an exempted substance.

3. *Application of no unreasonable risk factors.* The following is an explanation of the factors and their analysis relevant to the no unreasonable risk finding. The design of the final polymer exemption together with intrinsic properties of polymers significantly limit the risks of injury to human health or the environment that exempt polymers may present. Polymers as a general class are relatively unreactive and, at or above a MW of 10,000, are not easily absorbed by body tissue because they do not easily transport across human membranes. As originally discussed in the Agency's 1984 polymer exemption rule:

> ...for a chemical to elicit a toxic response within an organism, it must come into direct contact with the biological cells from which it elicits the response. Because all organisms are encased in protective membranes, a chemical must usually penetrate these membranes and be translocated to various parts of the organism to gain access to target sites. Therefore, it can be reasoned that if a chemical cannot penetrate the protective membranes to gain access to a target site, it usually cannot elicit a response in the organism no matter what inherent potential it may have to do so. It can be further reasoned that if a chemical cannot elicit a response, it will generally not present a risk. [49 FR 46081 (November 21, 1984].

EPA's conclusions regarding low risk potential for polymers that meet the eligibility criteria are supported by the available data as well as EPA's scientific professional judgment based on 15 years experience reviewing polymers under the PMN and current polymer exemption requirements. Pursuant to the final rule, certain polymers will be automatically ineligible for the polymer exemption. EPA has excluded those polymers for which: (a) The Agency still has insufficient data and review

experience to find that they will not present an unreasonable risk of injury, or (b) the Agency has found that, under certain conditions, based on data on the polymers in question, a polymer, or subset of polymers, may present an unreasonable risk, thereby requiring a closer examination of the conditions of manufacturing, processing, distribution in commerce, use, and disposal during a full 90–day PMN review. This level of analysis would be necessary to make an appropriate determination about risk.

In 1982, when the Risk Analysis and Evaluation of PMN Regulatory Decisions for Polymers was performed for the original polymer rule, the Agency determined that high MW polymers containing small amounts of low MW species were not considered an unreasonable risk to humans or the environment. Extensive discussion on this topic can be found in the 1982 proposed polymer exemption rule and the preamble to the final rule promulgated in 1984. The Agency has assumed that monomers would be of greater concern than oligomers, and that oligomers would be of greater concern than polymers based on the probability that the monomer would be more readily absorbed and, on a weight basis, be more reactive than the resulting oligomer or polymer. In its 1982 proposal, the Agency proposed to allow polymers with MW greater than 20,000 daltons to be manufactured without any premanufacture review by EPA but determined in the final rule that an abbreviated review period was necessary due to concerns for unreacted monomers and low MW species. The Agency is now modifying this approach, based on the review and hazard assessment of polymers reviewed as PMNs or polymer exemptions since the 1984 polymer exemption was promulgated. The Agency now believes that it has sufficient experience with high MW polymers such that a ''no unreasonable risk'' finding may be made for a broader class of these substances without EPA premanufacture review.

Over the past 15 years, the Agency has reviewed over 10,000 polymers in the New Chemicals Program (over approximately 50 percent of all PMNs are polymers). Of these 10,000, the polymers that would have qualified for the final polymer exemption rule have consistently been characterized as posing low concern for both adverse health and environmental risks by the Agency during the course of PMN review. The characteristics of a significant number of polymers (i.e., their MW and/or physical/chemical properties), are such that they are neither absorbed by biological systems nor do they interact with biological systems, as described above. (A more detailed discussion is provided in the preambles to the 1984 polymer exemption and the 1993 proposal.) Furthermore, these polymers do not degrade to toxic species in the environment.

The Agency has developed specific criteria which define low-risk polymeric substances. Such criteria include limitations on low MW species, reactive functional groups, and cationic polymers. Many of these criteria are outgrowths of the criteria used to determine eligibility under the current polymer exemption that has been in effect since 1984. Further, the Agency uses these same criteria to identify low-risk polymers in its PMN review process. The 1984 polymer exemption, which uses the same types of criteria as these final exemption criteria to determine eligibility, required a 21–day premanufacture review period. The Agency believes that this review period for polymers that meet the final exemption criteria is unnecessary based on EPA's finding that these exemption criteria place sufficient constraints on risk, such that EPA review of these eligible polymers would not result in any additional protection. Accordingly, exempting polymers that meet the low-risk eligibility criteria will allow the Agency to refocus its limited resources on those non-exempt substances which, by comparison, may pose a considerable risk to society.

In its 1993 proposal, the Agency expressed concern for potential lung toxicity due to inhalation of respirable high MW polymers. Toxicity studies, in the form of section 8(e) submissions on a water-absorbing high MW polymer and certain water-insoluble high MW polymers, indicated two areas of potential concern with high MW polymers.

The data set on the water-absorbing polymer, which is discussed in detail in unit II.B.2(e) of this preamble, included a 2-year chronic inhalation study reporting squamous cell carcinoma and bronchio-alveolar carcinomas at concentrations of 0.2 mg/$m^3$ and 0.8 mg/$m^3$ for the tested polymer, which was a water-absorbing polyacrylate polymer having a MW of greater than 1 million daltons. The tested polymer lacked both reactive functionalities and low MW species (below a MW of 1,000 daltons), factors that could have played a role in the reported carcinogenicity. In the absence of these factors, the Agency concluded that the water-absorbing properties of the polymer may have played a role in the reported carcinogenicity findings. Although the Agency was unable to establish a link between MW and toxicity for water-absorbing polymers, the Agency set the number average MW exclusion at 10,000 daltons which the Agency believes is a reasonable value at which absorption is a sufficiently slow process that a substance can persist in the lung. This MW level is also two orders of magnitude below that of the tested polymer. At 10,000 daltons and greater, these water-absorbing polymers are not likely to be absorbed, so mechanisms for detoxification which are available for lower MW polymers may not be available. Thus the respirable particles are expected to remain in the lung for extended periods. As stated earlier in unit II of this preamble, EPA believes that polymers with MW less than 10,000 daltons can be expected to be absorbed by the lung and therefore have different detoxification mechanisms available to mitigate potential health hazards. Based on these findings, the Agency has determined that exposure to respirable fractions of these polymers might present an unreasonable risk to human health and has excluded water-absorbing polymers with MW of 10,000 daltons or greater from the exemption eligibility.

Moreover, in response to comments requesting a definition of ''water-absorbing'' that more accurately defines this parameter for polymers of concern and based on further evaluation of the 2-year inhalation study on the polyacrylate polymer, the final rule defines a ''water-absorbing polymer'' as a polymer capable of absorbing its weight of water. Although the subject polyacrylate polymer absorbs approximately 100 times its weight of water, the Agency lowered the threshold for exclusion in this rule to absorbing its weight of water by using a hundredfold factor. This definition more accurately bounds the category of polymers that the Agency believes should be subject to the full PMN review process, pending the development of data that would mitigate the Agency's concern. These two limitations allow the Agency to conclude that the non-excluded water-absorbing polymers will not present an unreasonable risk of injury to human health. Accordingly, the final rule defines the term ''water-absorbing'' and excludes such polymers with MW of 10,000 or greater from the exemption.

The section 8(e) data on high MW water-insoluble polymers, which are discussed in detail in the 1993 proposal, indicated that inhalation of respirable particles of certain high MW water-insoluble polymers resulted in irreversible lung damage (fibrosis) but, under the conditions of the study, no

carcinogenic response to experimental animals. Numerous comments received on this issue questioned the Agency's use of a limited set of data to impose restrictions on an entire class of water-insoluble high MW polymers that are generally recognized as polymers of low-concern. In the proposed rule, the Agency itself recognized that imposing conditions under the exemption on high MW water-insoluble polymers may not have been appropriate and had requested comments on the alternative of imposing no limitations on the exemption eligibility of this category of polymers. In light of this and in response to numerous comments, the Agency re-examined its proposal to impose conditions on this category of high MW water-insoluble polymers. Please consult unit II.B of this preamble for an extensive discussion of this issue.

Based on its evaluation of 553 polymers that were the subject of polymer exemption applications during the past 3 years, as previously discussed in unit II.B.4(b) of this preamble, EPA concluded that there is an exceedingly low probability that potential exposure to high MW water-insoluble polymers, as a class, would result in an unreasonable risk of injury to human health or the environment. EPA reached a similar conclusion during promulgation of the 1984 exemption that exposure to polymer particulates was generally limited and expected to be of low risk. In its 1984 rule, EPA had recognized that particulate inhalation exposure was a potential source of toxicity which was not explained by MW, stating then that the review experience developed in the PMN program had demonstrated that exposure to polymer particulates was generally limited and therefore expected to be of low concern. 49 FR 46082 (November 21, 1984).

Further, EPA reviewed the section 8(e) data that were the basis of the Agency's concern regarding potential inhalation toxicity of high MW water-insoluble polymers. The studies on a toner for copy machines that was a water-insoluble polymer with a MW of 70,000 daltons included chronic inhalation studies in both rats and hamsters. These studies indicated that both species suffered similar lung damage when respirable dusts were inhaled at levels that also produced lung overloading. Other studies were performed on clearance rates that demonstrated that impaired clearance occurred without regard to particle concentration in the air once overloading had taken place. Other section 8(e) data on water-insoluble high MW polymers did not include chronic studies, but were shorter term studies that resulted in lung damage consistent with the damage seen when ''lung overloading'' occurred on a chronic basis.

Based on the above mentioned limited data and uncertainty as to all the factors contributing to the identified effects, the Agency determined that it could not draw any broad scientific conclusions in which lung toxicity is linked affirmatively with any specific chemical class or category of high MW water-insoluble polymers. In addition, it should be recognized that the chronic toxicity endpoint being addresssed for water-insoluble polymers was only seen under conditions of lung overload (which suggests the presence of a threshold for this type of toxicity). In the case of the water-absorbing polymers, which exhibit a cancer endpoint, the exemption criteria reflect the more conservative approach which the Agency has historically adopted for oncogenicity concerns. Further, it is clear from the Agency's experience in assessing high MW water-insoluble polymers that members of this class of polymers have rarely been subject to control action as a result of PMN review.

In the present rulemaking, based on numerous comments on this issue and the Agency's finding that exposure to respirable particles of high MW water-insoluble particles is expected to be limited, the Agency has concluded that it can make its statutory finding that polymers meeting the eligibility criteria will not present an unreasonable risk of injury to human health or the environment. The Agency believes that the criteria set forth in this exemption are sufficient to mitigate risk, particularly when compared to the benefits, *in toto*, of encouraging further development of comparatively lower risk classes of chemicals, such as polymers. Furthermore, the expedited manufacture of eligible new polymers will provide essential benefits to industry and to the public, which comprise an important element in the finding of no unreasonable risk.

4. *Benefits.* The following discussion describes the benefits of this rule in a qualitative manner; for a more quantitative approach, see the economic analysis discussion in unit V.B of this preamble. It is reasonable to assume that a newly developed polymer will either possess a new function or serve an existing function more efficiently or less expensively. The reduction in delay for that polymer to be introduced into commerce is a benefit to both manufacturers and the general public, who will have access to the substance in a more timely manner.

The benefits analyzed encompass more than the costs associated with submitting the polymer for review in a full PMN. Rather, EPA's benefit analysis included a consideration of the broader benefits of reduction of costs to society by providing a less burdensome alternative for polymer manufacturers, including a reduction in the burden associated with both full PMN and current polymer exemption requirements. EPA's unreasonable risk determination is based on broader benefits to society as well as those benefits attributable to the substance itself.

Some of the costs directly attributable to the substance include the preparation of the PMN or polymer exemption form as well as the delay in the commercial market introduction of the new chemical substance. On the other hand, there are broad societal benefits that can not be directly attributed to any one chemical substance or category of substances. Such benefits include a reduction in Agency review resources being dedicated to a category of compounds determined to be of low risk, and a concomitant shift in those resources to the review of substances of greater known concern. While factors such as these are generally not of the type that EPA would take into account when making an individual control decision on a new chemical substance, they have a significant effect on society which is directly linked to EPA's exercise of its exemption authority, and are therefore appropriately considered in a section 5(h)(4) unreasonable risk finding for a category of substances. The costs of reporting requirements will also be eliminated since companies will be able to manufacture polymers under terms of the exemption without submitting PMNs or exemption notices. These savings are detailed in the Regulatory Impact Analysis report which is available in the public docket for this rulemaking (docket control number OPPTS–50594B).

Manufacturers of polymers for which there is little concern bear a significant regulatory burden. By incorporating into the exemption those criteria that the EPA uses internally to judge the risks posed by polymers, the Agency removes the regulatory impediments to the design, manufacture, and commercialization of this large class of chemical substances and substantially reduces costs associated with industry's reporting burden for polymers meeting these low–risk criteria.

In addition, if the exemption is used to its greatest advantage, more than 31

percent of the resources allocated to the PMN program by EPA could be shifted from this category of low concern to those chemicals considered to pose a considerably greater risk to society. Finally, manufacturers of these polymeric substances will be given greater flexibility provided they meet the terms of the criteria of the exemption.

One of the benefits of the rule is that it incorporates exactly those criteria that delineate the areas of concern to EPA. By including this level of specificity in the rule, EPA provides industry with an understanding of which specific chemicals and chemical properties within the general class of polymers are considered to be hazards and which are considered relatively innocuous. Industry can use this information to design future polymeric products or classes of polymers that can supply the function that is desired while minimizing or eliminating any hazard. Supplying this information as criteria in the rule allows industry to engage in up-front risk-reduction activities by designing new products that conform with the provisions of the polymer exemption while reducing regulatory compliance costs.

Further, this rule provides pollution prevention benefits as well in three areas: the functional group equivalent weight specifications, the acceptable monomers list, and the water absorbability criteria. Pollution prevention principles have the goal of reducing or eliminating the use or generation of hazardous feedstocks, by-products, or products. By adherence to the lists of feedstocks and reactants of low concern contained in this rule, companies will be able to accomplish these pollution prevention goals while minimizing their regulatory compliance costs.

In view of the extensive and continually increasing use of polymers in commerce, encouraging industry to expand the use of low risk polymers can result in significant benefits to society. In general, such low risk polymers can, and often do, function as replacements for heavy metals, many of which can cause detrimental human health effects to multiple organ systems as well as permanently contaminating the ecosystem with subsequent damage to the flora and fauna. The benefits of encouraging the development of new chemical substances of low concern in place of those existing substances with known hazards touch on all aspects of human activity and the environment including less hazardous work place environments, safer products available for the consumer, and materials that will not decompose to toxic products in the disposal sites.

5. *Risk/benefit balance.* Determining the presence or absence of an unreasonable risk requires balancing of the benefits and risks posed by a regulatory action. EPA has determined that the risks are low based on the inherent properties of this class of substances and the additional safeguards provided by the risk-based ineligibility provisions.

EPA believes that the benefits of this action are quite significant. Promoting the development of this category of polymeric substances by reducing the regulatory burden in both reporting requirements and in eliminating the delay of these products into commerce will have discernible benefits to society. The added benefit of concentrating limited EPA resources on regulation of substances which have a greater potential to present significant risks, rather than a category such as polymers, which have a minimal potential for significant risk, is difficult to quantify, but is considered substantial nonetheless.

Given the above analysis, EPA concludes that the polymers covered by the scope of this final rule will not present an unreasonable risk of injury to human health or the environment when manufactured under the conditions of this exemption.

## V. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50594B). The record includes basic information considered by the Agency in developing this final rule. A public version of the record without any confidential business information is available in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office) from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located at EPA Headquarters in Rm. NE–B307, 401 M St., SW., Washington, DC.

## VI. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a ''significant regulatory action'' as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant'') (2) create serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or load programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this rule is not a ''significant regulatory action'' under section 3(f) of the Order. This action is therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the polymer exemption notice submitters were small firms, the number of small businesses affected by this action will not be substantial. In addition, since this action will generally reduce the existing burden and cost imposed on PMN submitters, the impact of this action on small entities should be an overall positive one.

### *C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012. The public reporting burden for this exemption has been eliminated. The public reporting burden for a PMN submission is estimated to vary from 95 to 110 hours; the burden for the 1984 polymer exemption is estimated to vary from 29.5 to 40 hours.

### List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Hazardous materials, Premanufacture notification, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR chapter I, subchapter R, part 723 is amended as follows:

## PART 723—[AMENDED]

1. The authority citation for part 723 continues to read as follows:

**Authority:** 15 U.S.C. 2604

2. By revising §723.250 to read as follows:

### §723.250 Polymers.

(a) *Purpose and scope.* (1) This section grants an exemption from certain of the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of certain polymers.

(2) To manufacture a new chemical substance under the terms of this section, a manufacturer must:

(i) Determine that the substance meets the definition of polymer in paragraph (b) of this section.

(ii) Determine that the substance is not specifically excluded by paragraph (d) of this section.

(iii) Ensure that the substance meets the exemption criteria of paragraph (e) of this section.

(iv) Submit a report as required under paragraph (f) of this section.

(v) Comply with the recordkeeping requirements of paragraph (j) of this section.

(b) *Definitions.* In addition to the definitions under section 3 of the Act, 15 U.S.C. 2602, the following definitions apply to this part.

*Act* means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

*Biopolymer* means a polymer directly produced by living or once-living cells or cellular components.

*Category of chemical substances* has the same meaning as in section 26(c)(2) of the Act (15 U.S.C. 2625).

*Cationic polymer* means a polymer that contains a net positively charged atom(s) or associated groups of atoms covalently linked to its polymer molecule.

*Chemical substance, Director, EPA, importer, impurity, Inventory, known to or reasonably ascertainable, manufacture, manufacturer, mixture, new chemical, person, possession or control, process and test data* have the same meanings as in §720.3 of this chapter.

*Equivalent weight of a functional group* means the ratio of the molecular weight to the number of occurrences of that functional group in the molecule. It is the weight of substance that contains one formula-weight of the functional group.

*Internal monomer unit* means a monomer unit that is covalently bonded to at least two other molecules. Internal monomer units of polymer molecules are chemically derived from monomer molecules that have formed covalent bonds between two or more other monomer molecules or other reactants.

*Monomer* means a chemical substance that is capable of forming covalent bonds with two or more like or unlike molecules under the conditions of the relevant polymer-forming reaction used for the particular process.

*Monomer Unit* means the reacted form of the monomer in a polymer.

*Number-average molecular weight* means the arithmetic average (mean) of the molecular weight of all molecules in a polymer.

*Oligomer* means a polymer molecule consisting of only a few monomer units (dimer, trimer, tetramer)

*Other reactant* means a molecule linked to one or more sequences of monomer units but which, under the relevant reaction conditions used for the particular process, cannot become a repeating unit in the polymer structure.

*Polyester* means a chemical substance that meets the definition of polymer and whose polymer molecules contain at least two carboxylic acid ester linkages, at least one of which links internal monomer units together.

*Polymer* means a chemical substance consisting of molecules characterized by the sequence of one or more types of monomer units and comprising a simple weight majority of molecules containing at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant and which consists of less than a simple weight majority of molecules of the same molecular weight. Such molecules must be distributed over a range of molecular weights wherein differences in the molecular weight are primarily attributable to differences in the number of monomer units. In the context of this definition, sequence means that the monomer units under consideration are covalently bound to one another and form a continuous string within the molecule, uninterrupted by units other than monomer units.

*Polymer molecule* means a molecule which contains a sequence of at least 3 monomer units which are covalently bound to at least one other monomer unit or other reactant.

*Reactant* means a chemical substance that is used intentionally in the manufacture of a polymer to become chemically a part of the polymer composition.

*Reactive functional group* means an atom or associated group of atoms in a chemical substance that is intended or can reasonably be anticipated to undergo further chemical reaction.

*Reasonably anticipated* means that a knowledgeable person would expect a given physical or chemical composition or characteristic to occur based on such factors as the nature of the precursors used to manufacture the polymer, the type of reaction, the type of manufacturing process, the products produced in polymerization, the intended uses of the substance, or associated use conditions.

(c) *Applicability.* This section applies to manufacturers of new chemical substances that otherwise must submit a premanufacture notice to EPA under §720.22 of this chapter. New substances are eligible for exemption under this section if they meet the definition of ''polymer'' in paragraph (b) of this section, and the criteria in paragraph (e) of this section, and if they are not excluded from the exemption under paragraph (d) of this section.

(d) *Polymers that cannot be manufactured under this section*— (1) *Cationic polymers.* A polymer cannot be manufactured under this section if the polymer is a cationic polymer as defined under paragraph (b) of this section or if the polymer is reasonably anticipated to become a cationic polymer in a natural aquatic environment (e.g., rivers, lakes) unless:

(i) The polymer is a solid material that is not soluble or dispersible in water and will be used only in the solid phase (e.g., polymers that will be used as ion exchange beads), or

(ii) The combined (total) functional group equivalent weight of cationic groups in the polymer is equal to or greater than 5,000.

(2) *Elemental limitations.* (i) A polymer manufactured under this section must contain as an integral part of its composition at least two of the atomic elements carbon, hydrogen, nitrogen, oxygen, silicon, and sulfur.

(ii) A polymer cannot be manufactured under this section if it contains as an integral part of its composition, except as impurities, any elements other than the following:

(A) The elements listed in paragraph (d)(2)(i) of this section.

(B) Sodium, magnesium, aluminum, potassium, calcium, chlorine, bromine, and iodine as the monatomic counterions $Na^{+}$, $Mg^{+2}$, $Al^{+3}$, $K^{+}$, $Ca^{+2}$, $Cl^{-}$, $Br^{-}$, or $I^{-}$.

(C) Fluorine, chlorine, bromine, and iodine covalently bound to carbon.

(D) Less than 0.20 weight percent of any combination of the atomic elements lithium, boron, phosphorus, titanium, manganese, iron, nickel, copper, zinc, tin, and zirconium.

(3) *Polymers which degrade, decompose, or depolymerize.* A polymer

cannot be manufactured under this section if the polymer is designed or is reasonably anticipated to substantially degrade, decompose, or depolymerize, including those polymers that could substantially decompose after manufacture and use, even though they are not actually intended to do so. For the purposes of this section, degradation, decomposition, or depolymerization mean those types of chemical change that convert a polymeric substance into simpler, smaller substances, through processes including but not limited to oxidation, hydrolysis, attack by solvents, heat, light, or microbial action.

(4) *Polymers manufactured or imported from monomers and reactants not on the TSCA Chemical Substance Inventory.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is prepared from monomers and/or other reactants (that are either charged to the reaction vessel or incorporated in the polymer at levels of greater than 2 weight percent) that are not already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

(5) *Water absorbing polymers with number average molecular weight (MW) 10,000 and greater.* A polymer cannot be manufactured under this section if the polymer being manufactured or imported is a water absorbing polymer and has a number average MW greater than or equal to 10,000 daltons. For purposes of this section, a water-absorbing polymer is a polymeric substance that is capable of absorbing its weight of water.

(e) *Exemption criteria.* To be manufactured under this section, the polymer must meet one of the following criteria:

(1) *Polymers with number average MW greater than or equal to 1,000 and less than 10,000 daltons (and oligomer content less than 10 percent below MW 500 and less than 25 percent below MW 1,000).* (i) The polymer must have a number average MW greater than or equal to 1,000 and less than 10,000 daltons and contain less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000.

(ii) The polymer cannot contain reactive functional groups unless it meets one of the following criteria:

(A) The polymer contains only the following reactive functional groups: carboxylic acid groups, aliphatic hydroxyl groups,unconjugated olefinic groups that are considered ''ordinary,''(i.e., not specially activated either by being part of a larger functional group, such as a vinyl ether, or by other activating influences, e.g., strongly electron-withdrawing sulfone group with which the olefinic groups interact), butenedioic acid groups, those conjugated olefinic groups contained in naturally-occurring fats, oils, and carboxylic acids, blocked isocyanates (including ketoxime-blocked isocyanates), thiols, unconjugated nitrile groups, and halogens (except that reactive halogen-containing groups such as benzylic or allylichalides cannot be included).

(B) The polymer has a combined (total) reactive group equivalent weight greater than or equal to 1,000 for the following reactive functional groups: acidhalides; acid anhydrides; aldehydes, hemiacetals; methylolamides,- amines or,- ureas; alkoxysilanes with alkoxy greater than $C_2$-alkoxysilanes; allyl ethers; conjugated olefins;cyanates; epoxides; imines; or unsubstituted positions *ortho* or *para* to phenolic hydroxyl; or

(C) If any reactive functional groups not included in paragraph (e)(1)(ii)(A) and (B) of this section are present, the combined (total) reactive group equivalent weight, including any groups listed in paragraph (e)(1)(ii)(B), is greater than or equal to 5,000.

(2) *Polymers with number average MW greater than or equal to 10,000 (and oligomer content less than 2 percent below MW 500 and less than 5 percent below MW 1,000)* . The polymer must have a number average MW greater than or equal to 10,000 daltons and contain less than 2 percent oligomeric material below MW 500 and less than 5 percent oligomeric material below MW 1000.

(3) *Polyester polymers.* The polymer is a polyester as defined in paragraph (b) of this section and is manufactured solely from one or more of the reactants in the following Table 1:

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE

| Reactant | CAS No. |
|---|---|
| **Monobasic Acids and Natural Oils** | |
| Benzoic acid | 65–85–0 |
| Canola oil | 120962–03–0 |
| Coconut oil | 8001–31–8* |
| Corn oil | 8001–30–7* |
| Cottonseed oil | 8001–29–4* |
| Dodecanoic acid | 143–07–7 |
| Fats and glyceridic oils, anchovy | 128952–11–4* |
| Fats and glyceridic oils, babassu | 91078–92–1* |
| Fats and glyceridic oils, herring | 68153–06–0* |
| Fats and glyceridic oils, menhaden | 8002–50–4* |
| Fats and glyceridic oils, sardine | 93334–41–9* |
| Fats and glyceridic oils, oiticica | 8016–35–1* |
| Fatty acids,$C_{16-18}$ and $C_{18}$-unsatd. | 67701–08–0* |
| Fatty acids, castor-oil | 61789–44–4* |
| Fatty acids, coco | 61788–47–4* |
| Fatty acids, dehydrated castor-oil | 61789–45–5* |
| Fatty acids, linseed oil | 68424–45–3* |
| Fatty acids, safflower oil | |
| Fatty acids, soya | 68308–53–2* |
| Fatty acids, sunflower oil | 84625–38–7* |
| Fatty acids, sunflower-oil, conjugated | 68953–27–5* |
| Fatty acids, tall-oil | 61790–12–3* |
| Fatty acids, tall-oil, conjugated* | |
| Fatty acids, vegetable oil | 61788–66–7* |
| Glycerides, $C_{16-18}$ and $C_{18}$-unsatd. | 67701–30–8* |
| Heptanoic acid | 111–14–8 |

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

| Reactant | CAS No. |
|---|---|
| Hexanoic acid | 142–62–1 |
| Hexanoic acid, 3,3,5-trimethyl- | 3302–10–1 |
| Linseed oil | 8001–26–1* |
| Linseed oil, oxidized | 68649–95–6* |
| Nonanoic acid | 112–05–0 |
| Oils, Cannabis* | |
| Oils, palm kernel | 8023–79–8* |
| Oils, perilla | 68132–21–8* |
| Oils, walnut | 8024–09–7 |
| Safflower oil | 8001–23–8* |
| Soybean oil | 8001–22–7* |
| Sunflower oil | 8001–21–6* |
| Tung oil | 8001–20–5* |
| Di and Tri Basic Acids:. | |
| 1,2-Benzenedicarboxylic acid | 88–99–3 |
| 1,3-Benzenedicarboxylic acid | 121–91–5 |
| 1,3-Benzenedicarboxylic acid, dimethyl ester | 1459–93–4 |
| 1,4-Benzenedicarboxylic acid | 100–21–0 |
| 1,4-Benzenedicarboxylic acid, diethyl ester | 636–09–9 |
| 1,4-Benzenedicarboxylic acid, dimethyl ester | 120–61–6 |
| 1,2,4-Benzenetricarboxylic acid | 528–44–9 |
| Butanedioic acid | 110–15–6 |
| Butanedioic acid, diethyl ester | 123–25–1 |
| Butanedioic acid, dimethyl ester | 106–65–0 |
| 2-Butenedioic acid (E)– | 110–17–8 |
| Decanedioic acid | 111–20–6 |
| Decanedioic acid, diethyl ester | 110–40–7 |
| Decanedioic acid, dimethyl ester | 106–79–6 |
| Dodecanedioic acid | 693–23–2 |
| Fatty acids, $C_{18}$-unsatd., dimers | 61788–89–4* |
| Heptanedioic acid | 111–16–0 |
| Heptanedioic acid, dimethyl ester | 1732–08–7 |
| Hexanedioic acid | 124–04–9 |
| Hexanedioic acid, dimethyl ester | 627–93–0 |
| Hexanedioic acid, diethyl ester | 141–28–6 |
| Nonanedioic acid | 123–99–9 |
| Nonanedioic acid, dimethyl ester | 1732–10–1 |
| Nonanedioic acid, diethyl ester | 624–17–9 |
| Octanedioic acid | (505–48–6) |
| Octanedioic acid, dimethyl ester | 1732–09–8 |
| Pentanedioic acid | (110–94–1) |
| Pentanedioic acid, dimethyl ester | 1119–40–0 |
| Pentanedioic acid, diethyl ester | 818–38–2 |
| Undecanedioic acid | 1852–04–6 |
| **Polyols** | |
| 1,3-Butanediol | 107–88–0 |
| 1,4-Butanediol | 110–63–4 |
| 1,4-Cyclohexanedimethanol | 105–08–8 |
| 1,2-Ethanediol | 107–21–1 |
| Ethanol, 2,2′-oxybis- | 111–46–6 |
| 1,6-Hexanediol | 629–11–8 |
| 1,3-Pentanediol, 2,2,4-trimethyl- | 144–19–4 |
| 1,2-Propanediol, | 57–55–6 |
| 1,3-Propanediol, 2,2-bis(hydroxymethyl)- | 115–77–5 |
| 1,3-Propanediol, 2,2-dimethyl- | 126–30–7 |
| 1,3-Propanediol, 2-ethyl-2-(hydroxymethyl)- | 77–99–6 |
| 1,3-Propanediol, 2-(hydroxymethyl)-2-methyl- | 77–85–0 |
| 1,3-propanediol, 2-methyl | 2163–42–0 |
| 1,2,3-Propanetriol | 56–81–5 |
| 1,2,3-Propanetriol, homopolymer | 25618–55–7 |
| 2-Propen-1-ol, polymer with ethenylbenzene | 25119-62–4 |
| **Modifiers** | |
| Acetic acid, 2,2′-oxybis- | 110–99–6 |
| 1-Butanol | 71–36–3** |
| Cyclohexanol | 108–93–0 |
| Cyclohexanol, 4,4′-(1-methylethylidene)bis- | 80–04–6 |
| Ethanol, 2-(2-butoxyethoxy)- | 112–34–5 |
| 1-Hexanol | 111–27–3 |
| Methanol, hydrolysis products with trichlorohexylsilane and trichlorophenylsilane | 72318–84–4* |
| 1-Phenanthrenemethanol, tetradecahydro-1,4a-dimethyl-7-(1-methylethyl)- | 13393–93–6 |

TABLE 1.— LIST OF REACTANTS FROM WHICH POLYESTER MAY BE MADE—Continued

| Reactant | CAS No. |
|---|---|
| Phenol, 4,4′-(1-methylethylidene)bis-, polymer with 2,2′- [(1-methylethylidene)bis(4,1-phenyleneoxymethylene)] bis[oxirane]. | 25036-25–3 |
| Siloxanes and Silicones, di-Me, di-Ph, polymers with Ph silsesquioxanes, methoxy-terminated | 68440–65–3* |
| Siloxanes and Silicones, di-Me, methoxy Ph, polymers with Ph silsesquioxanes, methoxy-terminated | 68957–04–0* |
| Siloxanes and Silicones, Me Ph, methoxy Ph, polymers with Ph silsesquioxanes, methoxy- and Ph-terminated | [1]68957–06–2* |
| Silsesquioxanes, Ph Pr | [1]68037–90–1* |

* Chemical substance of unknown or variable composition,complex reaction products, and biological materials (UVCB). The CAS Registry Numbers for UVCB substances are not used in CHEMICAL ABSTRACTS and its indexes.

** These substances may not be used in a substance manufactured from fumaric or maleic acid because of potential risks associated with esters, which may be formed by reaction of these reactants.

(f) *Exemption report for polymers manufactured under the terms of this section.* For substances exempt under paragraphs (e)(1), (e)(2), and (e)(3) of this section a report of manufacture or import must be submitted (postmarked) by January 31 of the year subsequent to initial manufacture. The notice must include:

(1) *Manufacturer's name.* This includes the name and address of the manufacturer and the name and telephone number of a technical contact.

(2) *Number of substances manufactured.* Number of substances manufactured. The manufacturer must identify the number of polymers manufactured under terms of the exemption for the first time in the year preceding the notice.

(g) *Chemical identity information.* For substances exempt under paragraph (e) of this section the manufacturer must to the extent known to or reasonably ascertainable by the manufacturer identify the following and maintain the records in accordance with paragraph (j) of this section:

(1) A specific chemical name and CAS Registry Number (or EPA assigned Accession Number) for each ''reactant,'' as that term is defined in paragraph (b) of this section, used at any weight in the manufacture of the polymer. For purposes of determining chemical identity, the manufacturer may determine whether a reactant is used at greater than two weight percent according to either the weight of the reactant charged to the reaction vessel or the weight of the chemically combined (incorporated) reactant in the polymer. Manufacturers who choose the ''incorporated'' method must have analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate compliance with this paragraph. Reactants that introduce into the polymer elements, properties, or functional groups that would render the polymer ineligible for the exemption are not allowed at any level.

(2) A representative structural diagram, if possible.

(h) *Certification.* To manufacture a substance under the terms of this section, a manufacturer must as of the date of first manufacture, make the following certification statements and maintain them in accordance with paragraph (j) of this section:

(1) The substance is manufactured or imported for a commercial purpose other than for research and development.

(2) All information in the certification is truthful.

(3) The new chemical substance meets the definition of a polymer, is not specifically excluded from the exemption in paragraph (d) of this section, and meets the conditions of the exemption in paragraph (e) of this section.

(i) *Exemptions granted under superseded regulations.* Manufacturers granted exemptions under the superseded requirements of §723.250 (as in effect on May 26, 1995) shall either continue to comply with those requirements or follow all procedural and recordkeeping requirements pursuant to this section. If an exemption holder continues to follow the superseded regulations, the Notice of Commencement requirements apply and the exempt polymer will continue to be listed on the Inventory with exclusion criteria and exemption category restrictions on residual monomer/reactant and low molecular weight species content limitations.

(j) *Recordkeeping.* (1) A manufacturer of a new polymer under paragraphs (e) of this section, must retain the records described in this paragraph at the manufacturing site for a period of 5 years from the date of commencement of manufacture or import.

(2) The records must include the following to demonstrate compliance with the terms of this section:

(i) Chemical identity information as required in paragraph (g) of this section.

(ii) Information to demonstrate that the new polymer is not specifically excluded from the exemption.

(iii) Records of production volume for the first 3 years of manufacture and the date of commencement of manufacture.

(iv) Information to demonstrate that the new polymer meets the exemption criteria in paragraphs (e)(1), (e)(2), or (e)(3) of this section.

(v) Analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate that the polymer meets the number-average MW exemption criteria in paragraphs (e)(1) or (e)(2) of this section.The analytical tests may include gel permeation chromatography (GPC).vapor pressure osmometry (VPO), or other such tests which will demonstrate that the polymer meets the number-average MW criterion.

(vi) Analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary), to demonstrate that the polymer meets the criteria in paragraphs (e)(1) or (e)(2) of this section, meets the low MW content criteria in paragraphs (e)(1) or (e)(2) of this section.

(vii) If applicable, analytical data, or theoretical calculations (if it can be documented that an analytical determination cannot be made or is not necessary) required in paragraph (g) of this section for determining monomers or reactants charged to the reaction vessel at greater than 2 weight percent but incorporated at 2 weight percent or less in the manufactured polymer.

(viii) The certification statements as required under paragraph (h) of this section.

(3) The manufacturer must submit the records listed in paragraph (j)(2) of this section to EPA upon written request by EPA. The manufacturer must provide these records within 15 working days of receipt of this request. In addition, any person who manufactures a new chemical substance under the terms of this section, upon request of EPA, must

permit such person at all reasonable times to have access to and to copy these records.

(k) *Submission of information.* Information submitted to EPA under this section must be sent in writing to: TSCA Document Control Officer, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

(l) *Compliance.* (1) A person who manufactures or imports a new chemical substance and fails to comply with any provision of this section is in violation of section 15 of the Act (15 U.S.C. 2614).

(2) Using for commercial purposes a chemical substance or mixture which a person knew or had reason to know was manufactured, processed, or distributed in commerce in violation of section 5 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this section and section 11 of the Act, is a violation of section 15 of the Act (15 U.S.C. 2614).

(4) Failure or refusal to permit entry or inspection as required by section 11 of the Act is a violation of section 15 of the Act (15 U.S.C. 2614).

(5) Violators may be subject to the civil and criminal penalties insection 16 of the Act (15 U.S.C. 2615) for each violation. Persons who submit materially misleading or false information in connection with the requirements of any provision of this section may be subject to penalties calculated as if they never filed their notices.

(6) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section or act to seize any chemical substance manufactured or processed in violation of this section or take other actions under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 2616).

(m) *Inspections.* EPA will conduct inspections under section 11 ofthe Act to assure compliance with section 5 and this section, to verify that information submitted to EPA under this section is true and correct, and to audit data submitted to EPA under this section.

(n) *Confidentiality.* If a manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with ''CONFIDENTIAL'' or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in 40 CFR part 2. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

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**40 CFR Part 723**

**[OPTS–50596B; FRL–4923–1]**

**RIN 2070–AC14**

## Premanufacture Notification Exemption; Revision of Exemption for Chemical Substances Manufactured in Small Quantities; Low Release and Exposure Exemption; Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires that persons notify EPA before they manufacture or import a new chemical substance for commercial purposes. Section 5(h)(4) of TSCA authorizes EPA, upon application and by rule to exempt the manufacturer or importer of any new chemical substance from some or all of the provisions of section 5 if the Agency determines that the manufacture, processing, distribution in commerce, use, or disposal of the substance will not present an unreasonable risk of injury to health or the environment. EPA is amending the current TSCA section 5(h)(4) limited exemption defined at 40 CFR 723.50 for persons who manufacture certain chemical substances in quantities of 1,000 kilograms or less per year. This amendment will increase the volume limit to 10,000 kilograms or less a year. Also, this amendment adds a new section 5(h)(4) exemption category for certain chemical substances with low environmental releases and human exposures. This amendment will significantly reduce administrative burdens on EPA and industry and will expedite the Agency review process so that lower risk chemical substances may be marketed more quickly. To ensure that these chemical substances will not present an unreasonable risk, EPA has included procedural safeguards, including a 30–day review, and other conditions in the exemption.

**DATES:** This rule is effective May 30, 1995. This rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time, on April 12, 1995.

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

**SUPPLEMENTARY INFORMATION:** The original exemption for chemical substances manufactured in quantities of 1,000 kilograms or less per year became effective on August 26, 1985. The supporting rationale and background for that exemption were published at 50 FR 16477 on April 26, 1985 and 47 FR 33896, August 4, 1982. This rule was proposed in the **Federal Register** on February 8, 1993 (58 FR 7646). Public hearings on this and related PMN exemptions were held in Washington, DC. on April 26–28, 1993. While general background information is presented here, readers should also consult the preambles for those notices for further information on the objectives and rationale for the rule and the basis for finding under TSCA section 5(h)(4) that activities involving the exempt chemical substances will not present an unreasonable risk of injury to human health or the environment.

### I. Background

Section 5(a)(1) of TSCA (15 U.S.C. 2604 (a)(1)) requires any person who intends to manufacture or import a new chemical substance to notify EPA 90 days before manufacture or importation begins. Section 5(h)(4) of TSCA (15 U.S.C. 2604(h)(4)) allows the EPA, by rule, to grant an exemption from any or all of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a substance will not present an unreasonable risk of injury to health or the environment.

### II. Final Exemption

*A. Summary of the Rule*

1. *Chemical substances manufactured at 10,000 kg or less per year.* Manufacturers of all new chemical substances manufactured in quantities of 10,000 kilograms or less per year are eligible to apply for a new category of exemption. (Note that throughout 40 CFR parts 720, 721, and 723, the term ''manufacturer'' is defined in TSCA section 3(8), 15 U.S.C. 2602(8), to include persons who import the specified chemical substance; the term ''manufacture'' is defined to include importation.) Upon approval, manufacturers will be permitted to manufacture up to 10,000 kilograms of the new chemical substance during

every 12 month period following the date of review period expiration without submitting a full premanufacture notice (''PMN'') under section 5(a)(1) of TSCA.

As with the prior exemption for new chemical substances produced at 1,000 kg or less, new chemical substances will not be approved under the new exemption if the Agency believes that they or their reasonably anticipated metabolites, environmental transformation products, byproducts, or impurities raise a concern for serious acute or chronic human health effects or significant environmental effects under reasonably anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. Any exemption application will be denied if the Agency is unable to affirmatively find that manufacture, processing, distribution in commerce, use, and disposal of the exempted substance pursuant to the exemption will not present an unreasonable risk of injury to human health or the environment.

Manufacturers requesting this exemption must submit notices 30 days prior to commencement of manufacture or import. As with the prior exemption, where manufacturers provide information on human exposure controls or environmental release controls to support the exemption notice, the manufacturers must maintain those controls throughout the duration of the exemption. If EPA identifies a potential risk from a new chemical substance, but believes that the risk may be sufficiently mitigated through pollution prevention techniques and/or exposure and release controls, the Agency may conditionally approve the exemption pending the manufacturer's submission of an amended exemption notice which includes those or equivalent techniques or controls. If there is insufficient time remaining in the review period to provide the amended information, manufacturers may request a temporary suspension of the review period under 40 CFR 720.75(b). All amended pages of the exception notice must be received by the Agency prior to the expiration of the exemption review period.

Manufacturers are similarly bound to the uses described in their exemption notices and may not change the manufacturing sites identified in their notices unless they either meet the conditions specified in paragraph (j)(6) of the exemption or submit a new exemption notice.

In accordance with practice under the superseded 1,000 kilogram exemption, the Agency will generally perform the risk assessment under the new exemption as if the total amount permissible under the exemption (10,000 kilograms) were being produced. However, submitters wishing their exemptions to be reviewed based upon annual production volumes lower than 10,000 kilograms may so indicate in their exemption notice by marking the binding box adjacent to the production volume space on the form. Submitters who so elect, however, are bound by their election. Submitters who subsequently wish to increase their maximum production volume under the exemption must submit a new exemption notice cross-referencing the original exemption number on the cover of the notice. If the new exemption is granted, it will supersede the previous exemption.

As of the effective date of this rule, the existing 1,000 kilogram exemption category will no longer be available for new exemptions. All exemptions previously granted under the 1,000 kilogram exemption will remain binding and effective under the superseded provisions of 40 CFR 723.50 even though such provisions will no longer be contained in the Code of Federal Regulations. Any modification of the terms of a previously granted exemption must be requested via a new exemption notice. For example, a manufacturer or importer who was granted an exemption under the prior 1,000 kilogram per year or less exemption may submit a new exemption notice to increase the production volume up to 10,000 kilograms per year for the same chemical substance. If such manufacturer does apply for the 10,000 kilogram exemption, its notice will be reviewed for unreasonable risk at the increased production volume. A new risk assessment will be performed based on the information submitted in the new notice. A submitter of a subsequent 10,000 kilogram exemption may continue to manufacture under the terms of the 1,000 kilogram exemption until a regulatory decision is made on the new exemption notice. If the new notice is granted, it will supersede the 1,000 kilogram exemption.

2. *Low release and exposure chemicals.* In connection with the Agency's overall pollution prevention strategy, EPA is adding a new exemption category for chemical substances with low environmental releases and low human exposures during their manufacture, distribution in commerce, processing, use, and disposal. All manufacturers and importers of new chemical substances subject to PMN requirements meeting the stated release and exposure criteria are eligible to apply for this low release and exposure (LoREX) exemption, regardless of production volume. The LoREX exemption is intended to encourage companies to develop manufacturing, processing, use, and disposal techniques which minimize exposures to workers, consumers, the general public, and the environment.

As with the low volume exemption, the uses of the new chemical substance are restricted to those approved in the exemption notice, and submitters must maintain any exposure or release controls throughout the period of the exemption. Manufacturing sites identified in the exemption notice are binding unless specified conditions are satisfied. (See Comment 3, unit II.B. of this preamble). EPA believes that these binding provisions of the LoREX exemption will, in many instances, prove to be an effective substitute to regulation under section 5(e) of TSCA. Thus, EPA expects this new exemption category to significantly reduce the administrative costs presently devoted to section 5(e) consent order development and review, and to permit manufacturers to commence commercial production of their new products more quickly, while ensuring against unreasonable risk of injury to human health or the environment.

Prospective submitters should be mindful that the principal focus of the LoREX exemption is on release and exposure, not toxicity. Except where specifically noted in paragraph (c) of the regulation, EPA will generally be unable to conduct a thorough review of any submitted test data within the allotted review period and may request a temporary suspension of the review period if data are submitted. Although the Agency encourages data development for new chemical substances, manufacturers with submissions which involve extensive data reviews may, in some cases, be better served under a PMN review. Such manufacturers are envouraged to contact the Pre Notice Communications Staff for guidance prior to notice submission. To the extent that the Agency must undertake extensive detailed examination of the inherent toxicity of a given chemical substance, submission of a PMN may be more appropriate. (Of course, any toxicity data on the new chemical substance in the possession or control of the manufacturer must accompany the submission whether necessary for exemption approval or not).

To satisfy the required section 5(h)(4) findings of no unreasonable risk, the exemption notice submitter must first meet the eligibility criteria listed in paragraph (c) of the rule indicating that exposure to the new substance, and

hence the risk presented by the substance, is low. Except as provided under the surface water and ambient air criteria, the human exposure side of the eligibility criteria requires the submitter to show that there are no exposures to consumers or the general public inherent in the proposed manufacturing, processing, or uses of the substance, and that any worker exposure which is likely to occur will be adequately controlled through use of engineering controls, work practices, and/or personal protective equipment.

In terms of environmental releases, LoREX eligibility criteria for releases to three environmental media are listed. In assessing the potential for environmental release, the submitter is required to consider all routine releases from manufacture, processing, and use, including releases associated with cleaning of equipment and from disposal or cleaning of containers and packaging. For ambient surface water, submitters must either (1) prevent all direct and indirect releases of the exempted substance to surface waters; or (2) demonstrate that any releases to water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90 and 721.91.

As stated in paragraph (c)(2)(iii) of the rule, the Agency may approve of a surface water concentration level above 1 ppb for a new chemical substance if the manufacturer supports a request for a higher concentration with relevant and scientifically valid data on the new chemical substance or a close structural analogue of the substance which demonstrates that the new substance will not present an unreasonable risk of injury to aquatic species or human health at the higher concentration. When such data is submitted, the Agency may request the manufacturer to temporarily suspend the review period to permit adequate time to review the data.

Based on the Agency's conservative assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criteria in nearly every case; therefore, compliance with the drinking water exposure criteria will be presumed from compliance with the 1 ppb surface water level. The Agency reserves the right, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious chronic effects are raised, or under conditions where actual drinking water exposures are likely to significantly exceed the 1 mg/yr dosage if the Agency makes the findings in §723.50(d).

The LoREX eligibility criterion for maximum annual average ambient air release concentration from incineration is 1 $\mu g/m^3$. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criterion, submitters must calculate exposure levels using the method described in §723.50(c)(2). As with drinking water exposures, the Agency may require lower air release levels in individual cases as the Agency makes the finding in §723.50(d).

For land/groundwater disposal, LoREX substances must not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the groundwater migration potential of the new substance is negligible. To make such a demonstration, a submitter must provide (1) data on the biodegradation and leaching potential of the new substance or a close analogue of the substance, (2) data on the inherent physical or chemical properties of the new substance (e.g., solubility in water), or (3) other data which clearly establishes that significant releases to groundwater will not occur. To fulfill this requirement, EPA suggests the following core set of tests to establish groundwater migration potential: (a) An inherent biodegradability in soil test (40 CFR 796.3400); (b) an anaerobic biodegradability of organic chemicals test (40 CFR 796.3140); and (c) depending on the substance's chemical properties, either a sediment and soil adsorption isotherm test (40 CFR 796.2750) or a soil thin layer chromatography test (40 CFR 796.2700). Although the Agency prefers test data on the specific new chemical substance, it will consider submitted data on close structural analogues to the new chemical substance. EPA strongly suggests that submitters contact the TSCA Prenotice Coordinator for guidance prior to commencement of the above testing.

Although it is difficult to state in advance precisely what combinations of results from the above testing would clearly establish that the groundwater migration potential of a chemical substance is ''negligible'', some broad parameters may be given. For example, manufacturers who perform soil adsorption testing that result in values for the logarithm of the soil adsorption coefficient (''log KOC'') of their new chemical substances of 4.5 or greater will generally be found to have satisfied the ''negligible groundwater migration potential'' standard, unless there is reason to believe that the substance is extremely persistent in the environment. Similarly, biodegradation test data demonstrating half-lives of chemical substances of under 1 week, or complete degradation in under 2 weeks, would satisfy the LoREX criterion in most instances. Hydrolysis data showing that a new chemical substance hydrolyses at a rapid rate would also generally be accepted by the Agency. Chemical substances which do not show either a 4.5 or greater Log KOC value alone or a half-life of under 1 week alone may nonetheless qualify for the LoREX exemption if the two values in combination, or together with other relevant data, support a conclusion that significant amounts of the substances will not reach aquifers.

The Agency encourages potential submitters to consult with the Agency prior to the initiation of any testing. Such consultation frequently results in more relevant data and can often lower the submitters' test costs.

Upon approval of a LoREX exemption, the submitter is bound to the uses and the exposure and release controls described in the approved exemption. The submitter is also bound to the listed manufacturing sites unless the conditions described in paragraph (j)(6) are met. The Agency will deny an exemption application despite satisfaction of the LoREX exemption criteria if EPA makes the findings in §723.50(d) or if there are issues concerning exposure or toxicity that require further review beyond 30 days under §723.50(h)(1).

### *B. Discussion of the Public Comments and the Final Rule*

This unit of the preamble summarizes the major public comments received, clarifies several areas of confusion identified by the public comments, and discusses the differences between the final rule and the proposal. Readers are also encouraged to consult the preamble of the proposed rule (58 FR 7646) for further explanation of these provisions.

*Comment 1—Information reporting burden.* Several commenters suggested that the information reporting requirements for both proposed exemption categories are overly burdensome and would discourage use of those exemptions; they believed that, because of this burden, many potential applicants would choose to submit full PMNs rather than use either of these two exemptions.

*Response.* The Agency reviewed the proposed information reporting requirements and has, to lesson that burden, revised those requirements in several areas, as described below. However, after close examination, EPA concluded that, in the context of these two exemption categories, some additional reporting burden is inevitable if the exemptions are to be practicable. This conclusion was based upon several factors. First, EPA believes that more information is necessary to support the TSCA section 5(h)(4) ''will not present an unreasonable risk'' finding for the higher production volume chemical substances likely to be reviewed under both the expanded low volume exemption, and for the new LoREX exemption category which does not contain any production volume limitations for eligibility. Second, in the Agency's experience under the prior low volume exemption (LVE), resolution of many exemption applications has been significantly delayed because additional information was needed to make regulatory decisions. Between June 1992 and January 1993, for example, over 12 percent of the LVE submissions were suspended during the review period pending receipt of additional human exposure, environmental release, worker protection, and/or environmental release control information necessary for the Agency's risk assessment. The percentage of submissions delayed for additional information would likely be significantly higher for the new higher-volume exemptions without some augmentation of the reporting requirements. Such delays would be very costly to both industry, through lost sales, and to EPA, through higher administrative expenditures.

One reporting area which several commenters identified as being particularly burdensome on manufacturers was human exposure/environmental release estimates, especially estimates for processing and use sites controlled by others. This burden was asserted to be especially acute on manufacturers of small volume specialty chemical products.

Upon review of these comments, EPA believes that, if provided with basic process descriptions for the proposed manufacturing, processing, and use operations of a new chemical substance, EPA can generate adequate exposure and release estimates for most types of new chemical substances which may be manufactured under the new low volume exemption. This belief is based on the experience gained from reviewing TSCA section 5 submissions for over 25,000 new chemical substances over the past 16 years. Therefore, the final rule has been amended to make information on human exposures and environmental releases for low volume exemption applicants optional if that information is not known by or readily available to the manufacturer. Manufacturers should be aware, however, that EPA-generated exposure and release estimates will generally be very conservative due to the uncertainties over the actual operating conditions which will be present at the manufacturing, processing, and use sites. Therefore, it will generally be in the applicants' interest to supply exposure and release data wherever possible. To assist in reporting such data under both the low volume and LoREX exemptions, the Agency has prepared a draft guidance document: Guidance for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50. This document may be obtained through the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

*Comment 2— Customer noncompliance reporting provisions.* Several companies expressed concern over the provisions in the proposal which would require exemption holders to immediately cease distribution of the exempted substance to any downstream recipient the holder learns is processing or using the exempt substance in violation of use, environmental release, worker exposure, or other restrictions of the exemption, and to report such violations to the Agency. It was suggested that the Agency adopt the alternative procedures for dealing with customer noncompliance now used by the Agency in its TSCA section 5(e) consent orders.

*Response.* The provisions in the proposal for customer notification of exemption restrictions and for reporting customer noncompliance and ceasing distribution pending EPA's investigation into deviations from exemption conditions are not new; they were retained from the prior low volume exemption regulation. (See existing 40 CFR 723.50(j)). The Agency has serious concerns over the environmental and human health risks which may result from any failures by downstream recipients to comply with the requirements of an approved exemption. Nevertheless, the Agency appreciates the difficulties which may flow from a requirement to immediately cease distribution to noncomplying customers, regardless of the gravity of the violation, and believes that the procedures developed in the section 5 consent order context would be appropriate in this exemption also. Therefore, the final rule has been modified as follows: If a manufacturer holding an exemption learns that a direct or indirect customer is processing or using the exempt substance in violation of any provisions of the exemption, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately unless the manufacturer is able to document each of the following: (1) That the manufacturer has, within 5 working days, notified the customer in writing that the customer has failed to comply with the conditions specified in §723.50 and the exemption notice; and (2) that, within 15 working days of notifying the customer of the noncompliance, the manufacturer received from the customer, in writing, a statement of assurance that the customer is aware of the terms of §723.50 and the exemption notice and will comply with those terms. If, after receiving a statement of assurance from a customer, the manufacturer obtains knowledge that the customer has failed to comply with any of the conditions specified in the §723.50 and the exemption notice, the manufacturer must immediately cease supplying the exempted substance to that customer and must report the failure to comply to EPA within 15 days of obtaining this knowledge. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the new chemical substance to the customer may resume.

*Comment 3— Changes in manufacturing site.* Several commenters requested that the Agency consider providing greater flexibility regarding changes in manufacturing sites for both categories of exemptions. They stated that such unanticipated changes as a sudden increase in demand or equipment failure at the original site can quickly create a need to employ an alternative manufacturing site on short notice. In such cases, the proposed process of obtaining approval for a new site may preclude the start up of another manufacturing operation in a timely fashion.

*Response.* In response to these comments, the Agency has added a new provision to the final rule which permits applicants to change manufacturing sites under the following conditions: First, where the magnitude, frequency, and duration of exposure of workers to the chemical substance at the new manufacturing site is equal to, or less than, the magnitude, frequency, and duration of worker exposures to the

chemical substance at the manufacturing sites for which the Agency performed its risk-assessment pursuant to the original exemption notice; and second, where either (1) at the new manufacturing site, the manufacturer does not release to surface waters any of the chemical substance, or any waste streams containing the chemical substance; or (2) at the new manufacturing site, the manufacturer maintains surface water concentrations of the chemical substance, resulting from direct or indirect discharges from the manufacturing site, at or below 1 ppb, or at or below an alternative concentration level approved by the Agency in writing or under the procedures described at 40 CFR 723.50(c)(2)(iii) of the rule. The surface water concentrations shall be calculated using the method described at 40 CFR 721.91 and 721.92.

To meet the first condition described above regarding worker exposure, a manufacturer need only maintain records showing that the new manufacturing site is employing the same basic manufacturing technology as that described in its initial exemption notice, such that there is not an appreciable difference in worker exposures during operations at the new site compared to the original sites. Alternatively, a manufacturer could show that the technology at the new site, though different, actually decreases worker exposure levels because of improved containment equipment, mechanization of manufacturing processes, or similar improvements.

The water release conditions may be satisfied simply by calculating the surface water concentrations using the method described at 40 CFR 721.90 and 721.91 and maintaining records of the calculations. For chemical substances regulated under either LoREX or the low volume exemption, the surface water concentrations must be at or below 1 ppb. If the Agency has approved a higher concentration level for a particular LoREX chemical substance under the procedures described at 40 CFR 723.50(c)(2)(iii), the water concentration must be at or below that higher level. The Agency will, upon request, provide LVE holders with the water concentration of concern (''COC'') used by the Agency in its risk assessment for the new chemical substance. LVE holders changing manufacturing sites must maintain surface water concentration levels at or below 1 ppb or the Agency-prescribed COC, whichever is greater.

All manufacturers who change or add manufacturing sites pursuant to these procedures must inform the Agency of the address of the new sites no later than 30 days after the commencement of manufacture at each new site. All other terms and conditions of the original exemption will continue in effect.

*Comment 4—LoREX eligibility criteria.* Several commenters suggested that the proposed LoREX eligibility criteria were too stringent, that very few chemical substances could meet the eligibility requirements, and that the Agency would achieve its streamlining objectives more directly by establishing an exemption for site-limited intermediates.

*Response.* The Agency largely disagrees with these comments. As explained in unit II. A. 2. of this preamble, EPA believes that the performance-based eligibility criteria for the LoREX exemption will be achievable for a significant number of new chemical substances, and that, once manufacturers become more familiar with the criteria, they will find it to be much more versatile than a site-limited intermediate exemption.

As discussed above in this preamble, the Agency has prepared a draft guidance document to assist manufacturers in reporting exposure and release information under this exemption. The draft document, entitled Guidelines for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50, explains in detail the type of information EPA will need to assess the potential risks of new chemical substances manufactured under the LoREX and low volume exemptions, and the type of documentation the Agency believes is adequate to support an exemption. The document may be obtained through the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

As stated throughout the proposal, the Agency was very interested in considering any alternative LoREX criteria which commenters might suggest. Despite those invitations, very little comment was offered on the specific proposed criteria itself. Nevertheless, the Agency reexamined the proposed criteria and has decided that the ambient surface water criteria could be amended to permit higher water concentrations in certain cases. Specifically, EPA determined that it could permit surface water concentrations above the standard 1 ppb if the higher level is supported by relevant and scientifically valid data on the new chemical substance or on a close structural analogue to the new chemical substance which adequately demonstrates that the new chemical substance will not present an unreasonable risk of injury to aquatic species or human health at the higher surface water concentration. Because scientific review of submitted test data will often require more than the normal 30–day review period, the Agency may, on a case-by-case basis, request manufacturers to temporarily suspend the review period pending data review.

*Comment 5—Revocation provisions.* Several commenters objected to the proposed provisions regarding revocation of exemptions after expiration of the review period. Under the proposal, the Agency could, based on new information, notify an exemption holder that EPA had determined that the new chemical substance did not meet the terms of the exemption and, after providing an opportunity for the holder to submit objections, could issue a final determination revoking the exemption if it disagreed with the exemption holder's objections. Numerous commenters were very concerned over the potential for business interruptions and loss of credibility with customers, and predicted that many prospective exemption applicants would choose submission of a full premanufacture notification rather than risk revocation of an exemption under the proposed provisions. Many suggested that the Agency reinstate the original notice of ineligibility provisions contained in the prior low volume exemption regulations.

*Response.* The Agency believes that manufacturers' concerns over unwarranted revocations overstate the potential for commercial harm coming to them as a result of these provisions. In fact, as the Agency stated during public hearings on the exemption, in the 9 years that the low volume exemption has been in effect, EPA has yet to invoke the post-review period revocation provisions in a single instance. Moreover, the Agency believes that the type of information which would convince it to invoke the revocation provisions would also convince most exemption holders to voluntarily withdraw their exemptions or undertake appropriate measures to mitigate the potential risk posed by the new chemical substance. Nevertheless, the Agency understands that a perceived risk of sudden business interruptions by prospective applicants and their customers may greatly discourage utilization of the exemption. In the final rule, therefore, EPA has reinstated the post-review period notice of ineligibility provisions as they were promulgated in the original low volume exemption. Those provisions differ from the

proposed provisions in 2 principal respects: first, the decision to invoke the provisions must be made by the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances; and second, if the Assistant Administrator determines, after a final determination that the substance does not meet the terms of the exemption, that the exemption holder acted with due diligence and in good faith to meet the terms of the exemption, the exemption holder may, if it submits a PMN for the new chemical substance, continue to manufacture, process, use, and distribute the new chemical substance unless EPA subsequently takes action under section 5(e) or 5(f) of TSCA.

*Comment 6—User fees.* Most commenters stated that, because exemption applications are less burdensome upon the Agency than a full PMN submissions, the proposed $2,500 user fee for the exemptions should be lowered to reflect this savings.

*Response.* Although the applications submitted under these two exemptions will be less costly, on average, for the Agency to review than PMN submissions, the average cost to the Agency of reviewing an exemption will still exceed $2,500; however, as a further incentive for manufacturers to utilize these exemptions wherever possible, the Agency has at this time decided not to impose a user fee requirement for these exemptions.

## III. Rationale for Expanding the Low Volume Exemption Category

### *A. Chemical Substances Manufactured at 10,000 Kilograms or Less Per Year*

The basic rationale for expanding the low volume exemption category from 1,000 kilograms per year to 10,000 kilograms per year is the same as that for proposing the exemption initially: chemical substances produced in lower quantities generally involve correspondingly lower human exposures and environmental releases, and thus generally present less risk than high volume substances. In the Agency's experience reviewing PMN substances in the 1,000 to 10,000 annual production range, very few of these substances present risks of injury to human health or the environment significantly greater than the substances produced under the existing low volume exemption. Additionally, the Agency believes that the low volume exemption has been a very successful regulatory mechanism as measured by the level of EPA administrative resources needed to implement it and the relative burden it places on manufacturers. Because of this success, EPA believes that both its interests and the interests of industry will be served by enlarging the portion of new chemical substances which may be manufactured under the exemption.

### *B. Low Release and Exposure (LoREX) Chemical Substances*

In addition to the production volume-based category described above, EPA is promulgating a new TSCA section 5(h)(4) exemption category based on low levels of environmental release of and human exposure to the new chemical substance. Eligibility is independent of production volume level.

The Agency believes that the concept of basing an exemption on low release and exposure offers several potential advantages over a more broad volume-based exemption. First, an exposure-driven exemption generally provides a more direct gauge of the magnitude of risk presented by a given new chemical substance. Production volume alone is only an indirect indicator of exposures and releases. Secondly, EPA believes that the existence of a LoREX exemption will encourage pollution prevention techniques by rewarding manufacturers able to meet the low release and exposure criteria with more timely regulatory decisions, and in many cases, with less burdensome regulatory controls. Such a result would entail substantial time and resource savings for both EPA and industry.

1. *LoREX criteria.* EPA has decided to set general performance standards for the LoREX exemption. Persons applying for exemptions are responsible for complying with these performance standards. Section 723.50(c) sets out the performance standards as ''criteria.'' Some are absolute, e.g., no releases to surface waters resulting in water concentrations above 1 ppb. Others set a goal but allow compliance to be achieved without an absolute guarantee (e.g., no dermal or inhalation worker exposure) but this result is assumed to occur if ''adequate'' controls are used. In others, a general standard is set, but EPA can approve a different level for a specific new chemical substance (e.g., no surface water releases resulting in surface water concentrations above 1 ppb unless a higher concentration is approved based on data provided by the applicant in the notice). In all cases, EPA does not specify how the exemption applicant is to achieve the performance standard. In its exemption notice, the applicant will describe how it limits exposure with respect to all the criteria in the exemption. EPA will evaluate whether these meet the criteria in §723.50(c)(2). If they do, EPA will grant the exemption. If the exemption is granted by EPA, the exemption holder is responsible for complying with the standards throughout the period of the exemption and with any controls or limitations specified in its exemption notice.

a. *Human exposure.* In determining the appropriate criteria for defining the types and/or levels of exposure which should constitute ''low exposure'' to humans, EPA considered three distinct populations: workers, consumers, and the general population. EPA believes that, for purposes of this exposure-based exemption, any direct exposures to consumers and the general population would be, in the context of an abbreviated review period, inconsistent with the Agency's statutory obligation under section 5(h)(4) to affirmatively find that the exempted substances will not present an unreasonable risk of injury to human health. Therefore, the Agency believes that any consumer and/or general population exposures (other than the negligible drinking water and ambient air exposures discussed later in this preamble) should automatically disqualify new chemical substances from LoREX exemption eligibility.

Exposures to workers may be more readily monitored and controlled through engineering controls, workplace practices, and/or protective equipment requirements. Therefore, the Agency believes that it may, consistent with its section 5(h)(4) obligation, approve a high percentage of LoREX exemption notices where appropriate control measures are instituted in the workplace.

Workplace exposures may occur through inhalation or dermal contact. For dermal exposures, the Agency believes that the general dermal exposure requirements used in section 5(e) consent orders and significant new use rules (SNURs) generally provide ''adequate dermal exposure controls.'' These include that all workers reasonably likely to be exposed to LoREX substances be provided with, and required to wear, chemical protective equipment which provides a barrier to prevent all dermal exposure to the substance. Chemical protective clothing used to provide this barrier is demonstrated to be impervious to the substance under the expected conditions of use and duration of exposure. Such demonstration could be accomplished under the procedures described at 40 CFR 721.63(a)(3)(i) - (ii) of the SNUR provisions by actually testing the material used to make the chemical protective clothing and/or by evaluating the specifications from the

manufacturer or supplier of the chemical protective clothing to establish that it will be impervious to the exempted substance alone and in likely combination with other chemical substances in the work area.

To provide ''adequate inhalation exposure controls,'' submitters of LoREX exemption notices will (i) identify the workplace operations where inhalation exposure is likely to occur; (2) assess the magnitude, frequency, and duration of potential exposure; (3) assess the effectiveness of the various exposure controls; and (4) select the method or combination of methods that will provide workers with the appropriate protection for the given workplace. While the Agency strongly encourages submitters to reduce workplace exposures at their source, where feasible, submitters could also ''provide adequate inhalation exposure controls'' based on the use of appropriate respiratory protection equipment. To achieve adequate controls, the Agency believes it most appropriate for a submitter to comply with the general requirements regarding respiratory protection used in TSCA section 5(e) consent orders and SNURS. These requirements stipulate the use of respiratory protection in accordance with the National Institute of Occupational Safety and Health (NIOSH) regulations at 30 CFR part 11, and the Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.134. (See generally 40 CFR 721.63). Similarly, the inherent physical or chemical properties of the substance submitted for an exemption may form the basis for a conclusion of adequate exposure controls, as in a nonvolatile dye manufactured, processed, and used only in solution, such that inhalation of particulates will not occur.

b. *Environmental release*— i. *Water releases.* The LoREX water release eligibility criterion of <1 ppb surface water concentration was established on the basis of EPA's experience in conducting environmental risk assessments on PMN substances. The concentration level must be calculated by the submitter using the method described in 40 CFR 721.90 and 721.91. Based on EPA's PMN experience, aquatic toxicity concern levels have only very rarely been established at levels below 1 ppb. Thus, EPA is confident that the vast majority of LoREX exemption notices satisfying this criterion will not present an unreasonable risk of acute or chronic aquatic toxicity, and that the Agency's risk assessment capabilities will identify those few exemptions which may require more strict concentration levels to protect against potential aquatic risks during the 30–day notice period.

ii. *Air releases from incineration.* The LoREX incineration air release eligibility criterion of < 1 $\mu g/m^3$, like the ambient surface water criterion, was selected on the basis of experience gained in conducting risk assessments on over 25,000 new chemical substances since 1979. At this maximum annual average concentration, EPA believes that, using worst case estimates, the maximum human exposures downwind from incinerators will be toxicologically insignificant for most of the chemical substances it is likely to review under the LoREX exemption. As noted above, however, the Agency may require individual submitters to adhere to lower incineration release levels for substances for which chronic toxicity concerns are raised during the risk assessment.

The methodology for calculating maximum annual average concentration (see subparagraph (c)(2)(iv) of the rule) was based on computer modeling similar to that used by the Agency in the PMN review process. Those interested in more detail on this methodology should consult the docket established for this rulemaking.

Submitters should also be aware that, although the final rule has not established generic eligibility criteria for fugitive air emissions unrelated to incineration, the Agency will review the potential for such emissions on a case-by-case basis, and will deny exemptions if the air emissions reach such levels as to undermine the Agency's ability to conclude that the substances in question will not present an unreasonable risk. Based on EPA's PMN experience, chemical substances with fugitive air emissions under 23 kilograms per site per year are seldom found to present an unreasonable risk of injury to the general population. Therefore, manufacturers submitting a LoREX exemption notice for substances with fugitive air emissions below that level are unlikely to be denied an exemption on that basis.

iii. *Land/groundwater releases.* The final rule excludes from eligibility all chemical substances which will be disposed of via landfill unless the submitter demonstrates to EPA in the notice that the exempted substance has negligible ground-water migration potential. This standard was deemed most appropriate for this purpose because the Agency was unable to develop a broadly applicable method for estimating groundwater concentrations of chemical substances based on landfill disposal volume that would allow development of a generic criterion. Given the many variables involved in making such estimates (e.g., migration rates, biodegradation rates, sediment/soil adsorption rates), EPA does not believe it will be possible to develop a generic model for estimating groundwater concentrations for a significant number of substances with sufficient reliability to support the requisite ''will not present an unreasonable risk'' finding. Consequently, the Agency believes that, in the context of an abbreviated review period in which in-depth case-by-case assessments of groundwater leaching potential are infeasible, prudence dictates that negligible release be the primary standard.

However, potential LoREX exemption submitters with no viable alternatives to landfill disposal have the option of demonstrating to the Agency's satisfaction that their substance will not migrate to groundwater. A list of suggested tests to establish groundwater migration potential is contained in Units II.A.2. of this preamble. If such a demonstration is made, a submitter would be permitted to landfill excess quantities of the exempted substance up to the amounts approved in its exemption notice. In all cases, however, the Agency strongly encourages submitters to strive for total elimination of releases through employment of the best available pollution prevention techniques. (See Unit II.A.2. of this preamble for further guidance on this criterion).

## IV. Regulatory Analysis

### *A. Summary of Risk Assessment*

1. *10,000 kilogram/year chemical substances.* To assess the risk associated with raising the ceiling for new chemical substances eligible for the low volume exemption from 1,000 kilograms/year to 10,000 kilograms/year, the Agency relied primarily upon the risk assessment developed to support the 1985 final low volume rule, along with the earlier version used to support the 1982 proposed low volume and site-limited intermediate rules.

a. *Exposure assessment.* The exposure assessment illustrates that, while low production volume in itself limits potential for exposure and environmental release, manufacture, processing, and use of new chemical substances can in some circumstances result in significant exposures at both the 1,000 and 10,000 kilogram annual production levels.

i. *Occupational exposure.* Based on PMN data, the number of workers exposed during manufacturing ranged from an average of about four for new

chemical substances manufactured in quantities of 1,000 kilograms or less per year to an average of about eight for new chemical substances manufactured in quantities of 10,000 kilograms or less per year. Duration of exposure associated with manufacture averaged about 5 hours per day at both production levels, and the average number of days of production per year was 62.

Only a limited number of PMNs included estimates of workplace concentration. The average concentrations associated with manufacture were most often in the ranges of 0 to 1 and 1 to 10 mg/$m^3$ for airborne solids and in the 1 to 10 ppm range for vapors. EPA's evaluation of OSHA data (USEPA, OTS ''Site-Limited Intermediate Exemption: Occupational Exposure and Environmental Release Assessment.'' March 19, 1982) indicated a time weighted average (TWA) of 6 ppm, with a maximum value of 72 ppm for vapors. EPA believes that data obtained from OSHA monitoring activities provides more reliable estimates of workplace concentrations.

EPA's analysis of processing and use of low volume chemicals indicated that the wide variety of possible processing and use operations can result in a wider range and higher level of exposures than is typically associated with manufacturing operations. The average number of workers exposed during processing and use operations exceeded the average numbers typically exposed during manufacturing. The number ranged from an average of 12 workers for a chemical processed in quantities of 1,000 kilograms or less per year to an average of 141 workers for chemicals processed or used in quantities of 10,000 kilograms or less per year.

ii. *Consumer exposure.* Consumer exposures were assessed for five use scenarios: photographic chemicals used in home darkrooms; spray adhesives; paints; dyes; and fragrances used in detergents. The use scenarios, which reflected actual uses reported in PMNs, were selected to represent divergent and potentially significant exposure situations. In these scenarios, the individual lifetime average daily exposures were estimated to range from 0.0016 mg/kg/day for a fragrance in soap to negligible levels for dyed fabrics.

According to EPA's analysis, many of the consumer use scenarios could result in relatively large numbers of consumers exposed. The numbers of consumers potentially exposed at the 10,000 kilogram production level ranged from 76,000,000 for a fragrance in shampoo to 98,000 for a spray adhesive. Because the concentration of a new chemical substance in a final product remains constant, the production volume is likely to affect only the number of consumers exposed, not the exposure level to each individual. Therefore, the number of consumers exposed at the 10,000 kilogram production limit is about 10 times the number that would be exposed at the 1,000 kilogram limit.

b. *Environmental release.* The Agency used data derived from PMN submissions for estimating the likely magnitude, duration, and frequency of environmental releases from manufacturing chemical substances under the new low volume exemption. The exposure analysis indicated that the average quantity released to water is 0.08 percent of the production volume, with an upper bound of 0.4 percent. Amounts released to air average 0.03 percent of production volume, with a 0.2 percent upper bound. However, some processing and industrial uses result in more substantial release rates, with a range from 0.3 to 25 percent of the production volume released to water. Discharges of a new low volume chemical substance from a single site processing 10,000 kilograms of the substance were estimated to produce environmental concentrations ranging from less than 0.0005 to 5.2 ppm in a receiving stream whose stream dilution factor was equal to the national median for streams receiving effluent from industrial facilities.

In some cases, such as detergent additives, environmental releases from consumer uses equaled the total production volume; however, the actual magnitude of environmental exposure was determined to be insignificant due to the low production volume, the wide distribution of release, and the small amount of new chemical substance typically contained in each consumer product.

c. *Risk under exemption conditions.* There are several elements of the exemption amendment that will significantly reduce risks to human health and the environment.

Chemical substances with carcinogenic, teratogenic, neurotoxic, and other chronic effects appear to present the greatest risks even at relatively low exposures. The Agency will deny exemptions for new substances which may cause such effects under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal. These denials will significantly reduce the likelihood that chemicals that present such risks would be manufactured under the amended exemption. If the exemptions for such substances are denied, or if their submitters are required to resubmit their exemption notices to provide for more stringent release and exposure controls prior to approval, the range of potential risks would be substantially below the high end of EPA's estimates.

In addition, under the amended regulation, EPA would continue to review all exemption notices during the 30–day review period. This review will help ensure that manufacturers choose appropriate safeguards to control risks, as well as provide a screen to identify substances that do not qualify for the exemption.

2. *Low exposure/release chemical substances.* The risk associated with a given substance is a function of both the inherent toxicity (hazard) of the substance and the exposure of the relevant organism to the substance. Therefore, to the extent that releases and exposures are maintained below certain critical levels, potential risks presented by the substance are minimal. To assess the potential risk associated with the LoREX exemption, the Agency evaluated the exposure and release criteria in the context of its experience conducting risk assessments on over 25,000 new chemical substances in the PMN program over the last 16 years. Based on this experience, EPA tailored its LoREX exemption criteria in a manner to exclude from eligibility virtually all of the new chemical substances which the Agency believes could present potentially significant human or environmental exposures under conditions of manufacturing, processing, and use. For those substances which meet the eligibility criteria but may nevertheless present significant risks due to unusually high known or predicted toxicity levels, the Agency will either deny the exemptions or condition approval upon satisfaction of stricter exposure and release requirements.

a. *Human exposure.* Due to the wide range of possible consumer and general population exposures from the universe of new chemical substances, the Agency concluded that it could not develop any meaningful consumer or general population exposure criteria which would consistently screen out those substances which would present unreasonable risks from direct dermal or inhalation exposures. Consequently, EPA has excluded from LoREX exemption eligibility all new chemical substances which entail any direct consumer or general population exposure (except for negligible drinking water and ambient air exposures discussed in Unit IV.A.2.b. of this preamble). New chemical substances

intended for use in consumer paints, detergents, dyes, and other consumer products, therefore, would have to be reviewed by the Agency in a full PMN or under one of the other applicable PMN exemptions, unless the chemical substance is completely reacted, encapsulated in a polymer matrix, or otherwise not bioavailable in the final product.

EPA has substantial experience with controlling worker exposure to new chemical substances from reviewing notices for over 25,000 new substances under section 5 of TSCA and issuing several hundred section 5(e) consent orders and SNURs with worker protection requirements. EPA believes that worker exposure to new chemical substances can be controlled adequately through the use of appropriate engineering/process controls and, if such controls cannot be used, through use of appropriate personal protective equipment. EPA has prescribed such controls and personal protective equipment in several hundred section 5(e) consent orders and believes that their proper use reduces worker dermal and inhalation exposure to new chemical substances to minimal levels. Thus, EPA concluded that for workers, who can be protected adequately from exposure to new chemical substances, it would set a goal of no dermal or inhalation exposure and allow persons applying for LoREX exemptions to meet those goals by using ''adequate'' controls and personal protective equipment modelled on the sorts of controls EPA has employed in the section 5(e) context.

b. *Environmental releases.* In terms of environmental releases, there are LoREX eligibility criteria for releases to three environmental media. For ambient surface water, the Agency is requiring that submitters either (i) prevent all direct and indirect releases of the exempted substance to surface waters; or (ii) demonstrate that any releases to surface water that may occur will result in surface water concentrations of the substance that are no greater than 1 part per billion (ppb) using the surface water concentration calculation method described in 40 CFR 721.90 and 721.91. Based on Agency worst case assumptions for drinking water exposure estimates, surface water concentrations of 1 ppb will result in human drinking water exposures at or below the 1 mg/year LoREX drinking water criterion in nearly every case; therefore, compliance with the drinking water exposure criterion will be presumed from compliance with the 1 ppb surface water level. The Agency retains the authority, however, to require lower surface water concentrations on a case-by-case basis when concerns for carcinogenicity, neurotoxicity, or other serious effects are raised, or under conditions where projected drinking water exposures are likely to significantly exceed the 1 mg/yr dosage.

The LoREX eligibility criterion for maximum annual average ambient air release concentrations from incineration of the new chemical substance is 1 μg/$m^3$. This level was derived from air exposure modeling estimates of maximum ground level concentrations from incinerator stacks, using worst case meteorological data sets. To determine whether a particular substance meets the criteria, submitters would calculate exposure levels using the method described in §723.50(c)(2)(iv). As with drinking water exposures, the Agency may require lower air release levels in individual cases if concerns for significant health effects are raised for the new substance.

For land/groundwater disposal, EPA is requiring that a LoREX substance not be disposed of by landfill or other land disposal methods unless the submitter demonstrates that the substance will not migrate to groundwater. (Consult unit II.A.2. of this preamble for further information on this criterion.)

Upon approval of a LoREX exemption, the submitter is bound to the continuous use of the exposure and release controls described in the approved exemption notice, as well as the listed uses and, unless specified conditions are met, manufacturing sites. The Agency will deny an exemption notice notwithstanding satisfaction of the exposure-based exemption criteria if EPA determines that the new substance may cause serious acute or chronic effects or significant environmental effects under anticipated conditions of manufacture, processing, distribution in commerce, use, and disposal.

## V. Economic Impact

The regulatory impact analysis estimates the costs and benefits attributable to the regulation. In this case, the analysis also contains estimates for the three additional amendments to EPA's TSCA section 5 regulations, namely the Polymer Amendment, the Procedural Amendment, and the Non-5(e) Significant New Use Rule Amendment, also published today. Because these regulations are amendments to current regulations, the costs and benefits are incremental, estimating the effect of the amendment with respect to the current regulation.

The costs and benefits associated with this amendment are partially quantified; many of the benefits are unquantified but are expected to be of significant importance. Considering only the quantified costs and benefits, there is a cost savings in most instances. Assuming either 1,000, 2,000, or 3,000 annual section 5 submissions, the savings as compared to the current regulation are estimated to be:

| Annual Number of Submissions | Annual Cost Savings ($ Million) | |
|---|---|---|
| | Industry | Government |
| 1000 ..... | 0.2 – 0.4 | 1.3 – 1.5 |
| 2000 ..... | 0.4 – 0.7 | 2.5 – 3.1 |
| 3000 ..... | 0.5 – 1.1 | 3.8 – 4.6 |

This amendment expands the low volume exemption and establishes the LoREX exemption. Industry costs associated with the amendment to the low volume exemption are reporting costs and delay costs. Per submission reporting costs are increased due to the more comprehensive submission requirements. Delay costs for those substances which qualify for the current exemption are slightly higher, while delay costs are significantly reduced for those substances which currently must submit a full PMN submission but would qualify for the new exemption. Delay costs are the costs associated with the delayed introduction of the substance into the market due to section 5 regulations.

Industry costs associated with the LoREX exemption are also reporting costs and delay costs. Because this would be a new exemption, all of the submitters would have originally been required to submit a full PMN submission and would be required to pay a user fee. Also, the reporting requirements are only slightly more than current requirements.

Unquantified benefits associated with this amendment include (1) increased use of pollution prevention practices by submitters; (2) a greater emphasis on the use of low risk chemicals; and (3) bringing LoREX substance and new substances manufactured between 1,000 and 10,000 kg per year to market more quickly. Regarding the third benefit, most chemical substances eligible for the exemption will clear review at least 60 days more quickly than if they had been submitted under a PMN; those substances that would have been regulated under section 5(e) will clear review, on average, 90 to 150 days sooner.

The Agency's complete economic analysis is available in the public record for this rule (OPPTS–50596B).

## VI. Finding of No Unreasonable Risk

1. *Statutory background.* Under section 5(h)(4) of TSCA, EPA is authorized to exempt the manufacturer of any new chemical substance from all or part of the requirements of section 5 if EPA determines that the manufacture, processing, distribution in commerce, use, and disposal of the substance will not present an unreasonable risk of injury to human health or the environment. Section 26(c) of TSCA provides that any action authorized under TSCA for an individual chemical substance may be taken for a category of such substances. Under this regulation, EPA is exempting two categories of chemical substances: those with production volumes less than or equal to 10,000 kilograms/year, and those with low human exposure and low release to the environment. EPA has determined that these are appropriate categories under TSCA sections 6(c) and 5(h)(4). For each of these categories, as discussed below, EPA has made a finding that new chemical substances eligible for the exemptions will not present an unreasonable risk of injury to human health or the environment when manufactured, processed, used, distributed in commerce, or disposed of under the terms of the exemptions, including EPA's 30–day review.

The term ''unreasonable risk'' is not defined in TSCA. The legislative history, however, indicates that unreasonable risk involves the balancing of the probability that harm will occur and the magnitude and severity of that harm against the effect of the proposed regulatory action on the availability to society of the benefits of the chemical substance.

2. *Risks.* In making the ''will not present an unreasonable risk'' finding under TSCA section 5(h)(4), EPA first considered the risk posed by granting each of the exemptions. Risk is the combination of the hazard presented by a chemical substance or category of chemical substances and the exposure of humans or the environment to the substances or category. EPA's determination of the reasonableness of risk involves a consideration of factors such as environmental effects, distribution, and fate of the chemical substance in the environment, disposal methods, waste water treatment, use of protective equipment and engineering controls, use patterns, and market potential of the chemical substance. These variables are difficult to quantify and standardize, thus EPA must supplement the available data with its professional judgment.

EPA's determination that manufacture, processing, use, distribution in commerce, and disposal of these two categories of substances under the terms of these exemptions will not present an unreasonable risk of injury to human health or the environment is based on consideration of (i) the limitations on risk that would result from the safeguards built into the rule, including Agency review; (ii) the limitations on risk resulting from the restriction of the exemptions to the chemical substances manufactured at volumes of 10,000 kg/yr or less and to low release/low exposure chemical substances; (iii) the benefits to industry and the public provided by new chemical substances manufactured under the exemption; and (iv) the benefits to the public and the Agency from the Agency's enhanced ability to utilize its limited resources on reviewing new chemical substances and uses of higher risk and concern. EPA recognizes that, even with the safeguards imposed by this rule, it is not ensuring that there will be no risk from new chemical substances manufactured under the exemption. The statute does not require zero risk. Rather, it defines unreasonable risk as a balancing of risk and benefit. Because of the safeguards in the amended regulation, the requirement that the provisions of the approved exemption are binding on the submitter, and the restricted nature of the exemption categories, EPA believes that risks are not likely to be any greater than if the full PMN process were completed. Furthermore, the new chemical substances provide benefits to industry and to the public. These benefits are an important element in the finding that these substances will not present an unreasonable risk.

The conditions of these exemptions are designed to mitigate risk, largely by the use of: (i) the reviews conducted by the Agency to assess whether the new chemical substances may cause chronic or acute human health or environmental effects; and (ii) the binding nature of the provisions of exemption notices, including the controls placed on exposure through worker protection requirements. For the low volume exemption, EPA determined that risks would generally be low because low production volume substances typically are not expected to result in high exposure to humans or the environment. Similarly, the eligibility criteria for the LoREX exemption directly limit permissible releases of and exposures to the exempted substances. In addition to the general finding of low release/low exposure, and therefore low risk for these categories, the restrictions and safeguards built into the exemptions will ensure that the risks presented by the exempt substances are low. For example, worker protection requirements and release restrictions imposed by the terms of the exemptions will minimize exposure, and therefore, risk.

a. *EPA review.* Within the 30–day review period, EPA is confident that it can identify the few new chemical substances under these exemptions that will pose potential risks which require more detailed and comprehensive review. EPA's abbreviated review plays an important role in the two exemptions and in the unreasonable risk finding. EPA has lengthened the review period from 21 to 30 days to ensure that staff resources will be sufficient to review the exemption notices under the amended rule. Information to be reviewed include production volume, hazard information, descriptions of the manufacturing, processing, and uses, exposure controls, releases to the environment, and certain physical/chemical data which EPA will assess in making a determination of risk. During this period, the Agency will have sufficient time to identify any issues or problems that will require more careful analysis, such as that available in a full PMN review. If EPA determines that a new chemical substance is not eligible for an exemption, manufacture will not begin. The manufacturer would then be required to comply with TSCA section 5(a)(1) before the substance could be manufactured for commercial purposes by submitting a full PMN to the Agency.

Despite the low risk generally associated with low volume and low release/low exposure substances, EPA recognizes that some substances that meet the general requirements for these exemptions, may present risks that are not appropriate for an exemption, thus EPA performs a 30–day review of each exemption notice and can deny individual exemptions. For example, a highly toxic chemical substance may present an unreasonable risk even if exposure to the substance is low. Likewise, a low production volume chemical substance may present an unreasonable risk if it is hazardous and is manufactured or processed in a manner that would result in high human exposure or high release to the environment. Thus, although EPA is making a general finding that these categories of new chemical substances will not present an unreasonable risk under the terms of the exemptions, EPA will continue to evaluate exemption notices on a case-by-case basis to determine if individual substances

should be denied an exemption based on the potential risks presented by those substances. For a further discussion of how EPA will determine when to deny an exemption, see Unit III. of this notice.

b. *New information and EPA revocation.* In addition to these safeguards, the rule contains several other provisions that further limit the possibility that exempted substances may present unreasonable risks. Most important, the rule establishes procedures for revocation of the exemption if EPA later determines that the substance may cause serious acute or chronic human effects or environmental effects. In addition, EPA has the authority to require documents relevant to an exemption from the manufacturer (in addition to the information provided in the exemption notice), and the manufacturer would be required to submit promptly to EPA any new data indicating that a substance is ineligible. These provisions will ensure that eligibility for and continuation of the exemption will be determined on the basis of the best available information, regardless of when the information becomes available.

3. *Benefits.* EPA believes that these exemptions will allow many manufacturers to introduce new chemical substances in commerce much more rapidly than via the PMN process. The time and resource savings will also benefit EPA which will, by utilizing its limited assets more efficiently, be able to apply more staff time to reviewing higher risk chemical substances and uses.

4. *Pollution prevention considerations.* The LoREX exemption is expected to further the Agency's pollution prevention efforts by encouraging development of manufacturing processes and technologies which reduce chemical releases and exposures at their source. Such reductions not only limit potential risks to people and the environment, but may also produce significant long-term cost savings to industry through the recapture and reuse of substances which would otherwise have been released into workplaces or the environment.

5. *Risk/benefit balance.* As discussed above, EPA has determined that the risk presented by exempting these two categories of new chemical substances is low. At the same time, there are significant benefits to be achieved by the exemptions, which encourage innovation and permit manufacturers to introduce new chemical substances into commerce more rapidly. Thus, EPA has determined that, under the terms of this rule, the risks associated with low volume substances and low release/low exposure substances are outweighed by the benefits to society of exempting these substances from full PMN review.

## VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50596B). The record includes basic information considered by the Agency in developing this rule. A public version of the record is available in the TSCA Nonconfidential Information Center from 12 noon to 4 p.m., Monday through Friday, except legal holidays. The TSCA Nonconfidential Information Center is located in Rm. NE–B607 (Northeast Mall), 401 M St., SW., Washington, DC.

## VIII. Regulatory Assessment Requirements

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51835, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the Order defines a ''significant regulatory action'' as an action that is likely to (1) have an annual effect on the economy of $100 million or more, or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant'') (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to Executive Order 12866, it has been determined that this rule is not ''a significant regulatory action'' under section 3(f) of the Order. This action is therefore not subject to OMB review.

### *B. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Agency has determined that this regulatory action will not impose any adverse economic impacts on small entities. EPA believes that, even if all of the notice submitters were small firms, the number of small businesses affected by this action will not be substantial. In addition, since this action will generally reduce the existing burden and cost imposed on notice submitters, the impact of this action on small entities should be an overall positive one.

### *C. Paperwork Reduction Act*

The information collection requirements in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3502 et. seq. and have been assigned OMB control number 2070–0012. The public reporting burden for this collection of information is estimated to vary from 96 to 116 hours per response, with an average of 106 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

### List of Subjects in 40 CFR Part 723

Chemicals, Environmental protection, Premanufacture notification, Hazardous materials, Reporting and recordkeeping requirements.

Dated: March 21, 1995.

**Carol M. Browner,**

*Administrator.*

Therefore, 40 CFR chapter I, part 723 is amended as follows:

## PART 723 — [AMENDED]

1. The authority citation for part 723 continues to read as follows:

**Authority:** 15 U.S.C. 2604.

2. By revising §723.50 to read as follows:

### §723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

(a) *Purpose and scope.* (1) This section grants an exemption from the premanufacture notice requirements of section 5(a)(1)(A) of the Toxic Substances Control Act (15 U.S.C. 2604(a)(1)(A)) for the manufacture of:

(i) Chemical substances manufactured in quantities of 10,000 kilograms or less per year.

(ii) Chemical substances with low environmental releases and human exposures.

(2) To manufacture a new chemical substance under the terms of this exemption a manufacturer must:

(i) Submit a notice of intent to manufacture 30 days before manufacture begins, as required under paragraph (e) of this section.

(ii) Comply with all other provisions of this section.

(b) *Definitions.* The following definitions apply to this subpart.

(1) *Act* means the Toxic Substances Control Act (15 U.S.C. 2601 et seq).

(2) *Consumer* means a private individual who uses a chemical substance or any product containing the chemical substance in or around a permanent or temporary household or residence, during recreation, or for any personal use or enjoyment.

(3) *Environment* has the same meaning as in section 3 of the Act (15 U.S.C. 2602).

(4) *Environmental transformation product* means any chemical substance resulting from the action of environmental processes on a parent compound that changes the molecular identity of the parent compound.

(5) *Metabolite* means a chemical entity produced by one or more enzymatic or nonenzymatic reactions as a result of exposure of an organism to a chemical substance.

(6) *Serious acute effects* means human disease processes or other adverse effects that have short latency periods for development, result from short-term exposure, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(7) *Serious chronic effects* means human disease processes or other adverse effects that have long latency periods for development, result from long-term exposure, are long-term illnesses, or are a combination of these factors and that are likely to result in death, severe or prolonged incapacitation, disfigurement, or severe or prolonged loss of the ability to use a normal bodily or intellectual function with a consequent impairment of normal activities.

(8) *Significant environmental effects* means:

(i) Any irreversible damage to biological, commercial, or agricultural resources of importance to society;

(ii) Any reversible damage to biological, commercial, or agricultural resources of importance to society if the damage persists beyond a single generation of the damaged resource or beyond a single year; or

(iii) Any known or reasonably anticipated loss of members of an endangered or threatened species. Endangered or threatened species are those species identified as such by the Secretary of the Interior in accordance with the Endangered Species Act, as amended (16 U.S.C. 1531).

(9) *Site* means a contiguous property unit. Property divided only by a public right-of-way is one site. There may be more than one manufacturing plant on a single site.

(10) The terms *byproduct, EPA, importer, impurity, known to or reasonably ascertainable, manufacture, manufacturer, new chemical substance, person, possession or control, and test data* have the same meanings as in §720.3 of this chapter.

(c) *Exemption categories.* Except as provided in paragraph (d) of this section, this exemption applies to:

(1) Any manufacturer of a new chemical substance manufactured in quantities of 10,000 kilograms or less per year under the terms of this exemption.

(2) Any manufacturer of a new chemical substance satisfying all of the following low environmental release and low human exposure eligibility criteria:

(i) *Consumers and the general population.* For exposure of consumers and the general population to the new chemical substance during all manufacturing, processing, distribution in commerce, use, and disposal of the substance:

(A) No dermal exposure.

(B) No inhalation exposure (except as described in paragraph (c)(2)(iv) of this section.

(C) Exposure in drinking water no greater than a 1 milligram per year (estimated average dosage resulting from drinking water exposure in streams from the maximum allowable concentration level from ambient surface water releases established under paragraph (c)(2)(iii) of this section or a higher concentration authorized by EPA under paragraph (c)(2)(iii) of this section).

(ii) *Workers.* For exposure of workers to the new chemical substance during all manufacturing, processing, distribution in commerce, use and disposal of the substance:

(A) No dermal exposure (this criterion is met if adequate dermal exposure controls are used in accordance with applicable EPA guidance).

(B) No inhalation exposure (this criterion is considered to be met if adequate inhalation exposure controls are used in accordance with applicable EPA guidance).

(iii) *Ambient surface water.* For ambient surface water releases, no releases resulting in surface water concentrations above 1 part per billion, calculated using the methods prescribed in §§721.90 and 721.91, unless EPA has approved a higher surface water concentration supported by relevant and scientifically valid data submitted to EPA in a notice under paragraph (e) of this section on the substance or a close structural analogue of the substance which demonstrates that the new substance will not present an unreasonable risk of injury to aquatic species or human health at the higher concentration.

(iv) *Incineration.* For ambient air releases from incineration, no releases of the new chemical substance above 1 microgram per cubic meter maximum annual average concentration, calculated using the formula:

(kg/day of release after treatment) multiplied by (number of release days per year) multiplied by ($9.68 \times 10^{-6}$) micrograms per cubic meter.

(v) *Land or groundwater.* For releases to land or groundwater, no releases to groundwater, to land, or to a landfill unless the manufacturer has demonstrated to EPA's satisfaction in a notice under paragraph (e) of this section that the new substance has negligible groundwater migration potential.

(d) *Chemical substances that cannot be manufactured under this exemption.* A new chemical substance cannot be manufactured under this section, notwithstanding satisfaction of the criterion of paragraphs (c)(1) or (c)(2) of this section, if EPA determines, in accordance with paragraph (g) of this section, that the substance, any reasonably anticipated metabolites, environmental transformation products, or byproducts of the substance, or any reasonably anticipated impurities in the substance may cause, under anticipated conditions of manufacture, processing, distribution in commerce, use, or disposal of the new chemical substance:

(1) Serious acute (lethal or sublethal) effects.

(2) Serious chronic (including carcinogenic and teratogenic) effects.

(3) Significant environmental effects.

(e) *Exemption notice.* (1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. The notice must be sent in writing to: TSCA Document Control Officer, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. The date of submission will be the date on which the notice is received by the TSCA Document Control Officer. EPA will acknowledge the receipt of the notice by letter. The letter will identify

the date on which the review period begins. The notice shall be submitted using EPA Form No. 7710–25 (''the PMN form''), which may be obtained from EPA by writing the Environmental Assistance Division, (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC. 20460, or by calling the TSCA Assistance Information Service at (202) 554–1404; TDD (202) 554–0551; online service modem (202) 554–5603.

(2) The notice shall contain the information described below, pursuant to the referenced provisions of §720.45.

(i) Manufacturer identity.

(ii) Chemical identity (§720.45(a)).

(iii) Impurities (§720.45(b)).

(iv) Known synonyms or trade names (§720.45(c)).

(v) Byproducts (§720.45(d)).

(vi) Production volume (§720.45(e)). (A) Manufacturers submitting an exemption application under paragraph (c)(1) of this section will be assumed to be manufacturing at an annual production volume of 10,000 kilograms. Manufacturers who intend to manufacture an exempted substance at annual volumes of less than 10,000 kilograms and wish EPA to conduct its risk assessment based upon such lesser annual production level rather than a 10,000–kilograms level, may so specify by writing the lesser annual production volume in the appropriate box on the PMN form and marking the adjacent binding option box. Manufacturers who opt to specify annual production levels below 10,000 kilograms and who mark the production volume binding option box shall not manufacture more than the specific annual amount of the exempted substance unless a new exemption notice for a higher (up to 10,000 kgs) manufacturing volume is submitted and approved pursuant to this section.

(B) Manufacturers submitting an exemption under paragraph (c)(2) of this section shall list the estimated maximum amount to be manufactured during the first year of production and the estimated maximum amount to be manufactured during any 12–month period during the first 3 years of production.

(vii) Description of intended categories of use. (§720.45(f)).

(viii) For manufacturer-controlled sites, the manufacturer shall supply identity of manufacturing sites, process descriptions, and worker exposure and environmental release information (§720.45(g)); for sites not controlled by the manufacturer, processing and use operation descriptions, estimated number of processing and use sites, and worker exposure/environmental release information (§720.45(h)). A manufacturer applying for an exemption under paragraph (c)(1) of this section need not provide information on worker exposure and environmental release referenced in paragraphs (e)(2)(viii) of this section if such information is not known or not readily available to the manufacturer. To assist in reporting this information, manufacturers may obtain a copy of EPA's Guidance for Reporting Occupational Exposure and Environmental Release Information under 40 CFR 723.50, available from the Environmental Assistance Division at the address listed in paragraph (e)(1) of this section. Where worker exposure and environmental release information is not supplied by the manufacturer, EPA will generally apply ''bounding estimates'' (i.e., exposure estimates higher than those incurred by persons in the population with the highest exposure) to account for uncertainties in actual exposure and release scenarios.

(ix) Type and category of notice. The manufacturer must clearly indicate on the first page of the PMN form that the submission is a ''TSCA section 5(h)(4) exemption notice,'' and must indicate whether the notice is being submitted under paragraph (c)(1) or (c)(2) of this section. Manufacturers of chemical substances that qualify for an exemption under both paragraph (c)(1) and (c)(2) of this section may apply for either exemption, but not both.

(x) Test data (§720.50).

(xi) Certification. In addition to the certifications required in EPA form 7710–25, the following certifications shall be included in notices under this section. The manufacturer must certify that:

(A) The manufacturer intends to manufacture or import the new chemical substance for commercial purposes, other than in small quantities solely for research and development, under the terms of this section.

(B) The manufacturer is familiar with the terms of this section and will comply with those terms.

(C) The new chemical substance for which the notice is submitted meets all applicable exemption conditions.

(D) For substances manufactured under paragraph (c)(1) of this section, the manufacturer intends to commence manufacture of the exempted substance for commercial purposes within 1 year of the date of the expiration of the 30–day review period.

(xii) Sanitized copy of notice. (A) The manufacturer must make all claims of confidentiality in accordance with paragraph (l) of this section. If any information is claimed confidential, the manufacturer must submit a second copy of the notice, with all information claimed as confidential deleted, in accordance with paragraph (l)(3) of this section.

(B) If the manufacturer does not provide the second copy, the submission will be considered incomplete.

(3) *Incomplete notices.* If EPA receives a submission which does not include all of the information required under this paragraph (e) of this section, the submission will be determined to be incomplete by EPA. When a submission for a new chemical substance has been determined to be incomplete, a manufacturer reapplying for an exemption for the new chemical substance must submit a new exemption notice containing all the information required under this paragraph (e) of this section including a certification page containing an original dated signature; partial submissions sent to EPA to supplement notices declared incomplete will not be accepted. Photocopied pages from previously submitted exemption forms will be accepted provided that the certifications page contains an original dated signature.

(f) *Multiple exemption holders.* (1) A manufacturer who intends to manufacture a substance for which an exemption under this section was previously approved may apply for an exemption under paragraph (c)(1) or (c)(2) of this section; however, EPA will not approve any subsequent exemption application under paragraph (c)(1) of this section unless it can determine that the potential human exposure to, and environmental release of, the new chemical substance at the higher aggregate production volume will not present an unreasonable risk of injury to human health or the environment.

(2)(i) If EPA proposes to deny an exemption application for a substance for which another manufacturer currently holds an exemption, and that proposed denial is based exclusively on the cumulative human exposure or environmental release of the substance which precludes the EPA from determining that the subsequent applicant's activities will not present an unreasonable risk of injury to human health or the environment, the EPA will notify the first exemption holder that it must, within 21 days of its receipt of EPA's notice, either:

(A) Provide a new certification that it has commenced, or that it will commence, manufacture of the new chemical substance under this section within 1 year of the expiration of its exemption review period; or

(B) Withdraw its exemption for the new chemical substance.

(ii) If the first exemption holder does not respond to the EPA's notice under paragraph (f)(2)(i) of this section within the prescribed time period, EPA shall issue a notice of ineligibility to the first exemption holder under the provisions of paragraph (h)(2) of this section.

(g) *Review period.* (1) EPA will review the notice submitted under paragraph (e) of this section to determine whether manufacture of the new chemical substance is eligible for the exemption. The review period will end 30 days after receipt of the notice by the TSCA Document Control Officer. To provide additional time to address any unresolved issues concerning an exemption application, the exemption applicant may, at any time during the review period, request a suspension of the review period pursuant to the provisions of §720.75(b) of this chapter.

(2) Upon expiration of the 30–day review period, if EPA has taken no action, the manufacturer may consider its exemption approved and begin to manufacture the new chemical substance under the terms described in its notice and in this section.

(h) *Notice of ineligibility*—(1) *During the review period.* If the EPA determines during the review period that manufacture of the new chemical substance does not meet the terms of this section or that there are issues concerning toxicity or exposure that require further review which cannot be accomplished within the 30–day review period, EPA will notify the manufacturer by telephone that the substance is not eligible. This telephone notification will subsequently be confirmed by certified letter that identifies the reasons for the ineligibility determination. The manufacturer may not begin manufacture of the new chemical substance without complying with section 5(a)(1) of the Act or submitting a new notice under paragraph (e) of this section that satisfies EPA's concerns.

(2) *After the review period.* (i)(A) If at any time after the review period specified in paragraph (g) of this section the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances (''the Assistant Administrator'') makes a preliminary determination that manufacture of the new chemical substance does not meet the terms of this section, the Assistant Administrator will notify the manufacturer by certified letter that EPA believes that the new chemical substance does not meet the terms of the section.

(B) The manufacturer may continue to manufacture, process, distribute in commerce, and use the substance after receiving the notice under paragraph (h)(2)(i)(A) of this section if the manufacturer was manufacturing, processing, distributing in commerce, or using the substance at the time of the notification and if the manufacturer submits objections or an explanation under paragraph (h)(2)(ii) of this section. Manufacturers not manufacturing, processing, distributing in commerce, or using the substance at the time of the notification may not begin manufacture until EPA makes its final determination under paragraph (h)(2)(iii) of this section.

(ii) A manufacturer who has received notice under paragraph (h)(2)(i)(A) of this section may submit, within 15 days of receipt of written notification, detailed objections to the determination or an explanation of its diligence and good faith efforts in attempting to comply with the terms of this section.

(iii) The Assistant Administrator will consider any objections or explanation submitted under paragraph (h)(2)(ii) of this section and will make a final determination. The Assistant Administrator will notify the manufacturer of the final determination by telephone within 15 days of receipt of the objections or explanation, and subsequently by certified letter.

(iv) If the Assistant Administrator determines that manufacture of the new chemical substance meets the terms of this section, the manufacturer may continue or resume manufacture, processing, distribution in commerce, and use in accordance with the terms of this section.

(v) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer did not act with due diligence and in good faith to meet the terms of this section, the manufacturer must cease any continuing manufacture, processing, distribution in commerce, and use of the new chemical substance within 7 days of the written notification under paragraph (h)(2)(iii) of this section. The manufacturer may not resume manufacture, processing, distribution in commerce, and use of the new chemical substance until it submits a notice under section 5(a)(1) of the Act and part 720 of this chapter and the notice review period has ended.

(vi) If the Assistant Administrator determines that manufacture of the new chemical substance does not meet the terms of this section and that the manufacturer acted with due diligence and in good faith to meet the terms of this section, the manufacturer may continue manufacture, processing, distribution in commerce, and use of the new chemical substance if:

(A) It was actually manufacturing, processing, distributing in commerce, or using the chemical substance at the time it received the notification specified in paragraph (h)(2)(i)(A) of this section.

(B) It submits a notice on the new chemical substance under section 5(a)(1) of the Act and part 720 of this chapter within 15 days of receipt of the written notification under paragraph (h)(2)(iii) of this section. Such manufacture, processing, distribution in commerce, and use may continue unless EPA takes action under section 5(e) or 5(f) of the Act.

(3) Action under this paragraph does not preclude action under sections 7, 15, 16, or 17 of the Act.

(i) *Additional information.* If the manufacturer of a new chemical substance under the terms of this exemption obtains test data or other information indicating that the new chemical substance may not qualify under terms of this section, the manufacturer must submit these data or information to EPA within 15 working days of receipt of the information. If, during the notice review period specified in paragraph (g) of this section, the submitter obtains possession, control, or knowledge of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the notice, the submitter must send that information to the address listed on the notice form within 10 days of receiving the new information, but no later than 5 days before the end of the notice review period. The new submission must clearly identify the submitter and the exemption notice to which the new information is related. If the new information becomes available during the last 5 days of the notice review period, the submitter must immediately inform its EPA contact for that notice by telephone.

(j) *Changes in manufacturing site, use, human exposure and environmental release controls, and certain manufacturing volumes.* (1) Except as provided in paragraph (j)(6) of this section, chemical substances manufactured under this section must be manufactured at the site or sites described, for the uses described, and under the human exposure and environmental release controls described in the exemption notice under paragraph (e) of this section.

(2) Where the manufacturer lists a specific physical form in which the new chemical substance will be manufactured, processed, and/or used,

the manufacturer must continue manufacturing, processing, and/or using the new chemical substance in either the same physical form described in the notice under paragraph (e), or in a physical form which will not increase the human exposure to or environmental release of the new chemical substance over those exposures or releases resulting from the specified physical form (e.g., a manufacturer which specifies that the new chemical substance will be produced in a non-volatile liquid form generally may not change to a respirable powder form).

(3) The annual production volume of chemical substances manufactured under paragraph (c)(1) of this section for which the manufacturer designated a binding annual production volume pursuant to paragraph (e)(2)(vi) of this section must not exceed that designated volume.

(4) Any person who manufactures a new chemical substance under paragraph (c)(1) or (c)(2) of this section must comply with the provisions of this section, including submission of a new notice under paragraph (e) of this section, before:

(i) Manufacturing the new chemical substance at a site that was not approved in a previous exemption notice for the substance, except as provided in paragraph (j)(6) of this section.

(ii) Manufacturing the new chemical substance for a use that was not approved in a previous exemption notice for the substance.

(iii) Manufacturing the new chemical substance without employing the human exposure and environmental release controls approved in a previous exemption notice for the substance.

(iv) Manufacturing the new chemical substance in a physical form different than that physical form approved in a previous exemption notice for the substance and which form may increase the human exposure to, or environmental release of, the new chemical substance over those exposures or releases resulting from the physical form approved in the previous notice.

(v) Manufacturing the chemical substance in annual production volumes above any volume designated by the manufacturer as binding under paragraph (e)(2)(vi) of this section in a previous exemption notice for the substance.

(5) In an exemption notice informing EPA of a change in site, use, or worker protection, or environmental release controls, the manufacturer is not required to provide all of the same information submitted to EPA in a previous exemption notice for that chemical substance. The new exemption notice, however, must indicate the identity of the new chemical substance; the manufacturer's name; the name and telephone number of a technical contact; and location of the new site, new worker protection or environmental release controls, and new use information. The notice must also include the EPA-designated exemption number assigned to the previous notice and a new certification by the manufacturer, as described in paragraph (e)(2)(xi) of this section.

(6)(i) A manufacturer may, without submitting a new notice, manufacture the new chemical substance at a site not listed in its exemption application under the following conditions:

(A) the magnitude, frequency, and duration of exposure of individual workers to the new chemical substance at the new manufacturing site is equal to, or less than, the magnitude, frequency, and duration of exposure of the individual workers to the new chemical substance at the manufacturing site for which the EPA performed its original risk-assessment pursuant to the original exemption notice; and

(B) Either (*1*) at the new manufacturing site, the manufacturer does not release to surface waters any of the new chemical substance, or any waste streams containing the new chemical substance; or (*2*) at the new manufacturing site, the manufacturer maintains surface water concentrations of the chemical substance, resulting from direct or indirect discharges from the manufacturing site, at or below 1 part per billion, or at or below an alternative concentration level approved by the Agency in writing or under the procedures described in paragraph (c)(2)(iii) of this section, using the water concentration calculation method described at §§721.90 and 721.91.

(ii) The manufacturer shall notify EPA of any new manufacturing site no later than 30 days after the commencement of manufacture of the new chemical substance under the exemption at the new manufacturing site as follows:

(A) The notification must contain the EPA-designated exemption number to which the notification applies, manufacturer identity, the street address of the new manufacturing site, the date on which manufacture commenced at the new site, the name and telephone number of a technical contact at the new site, any claim of confidentiality, and a statement that the notification is an amendment to the original exemption application under the terms of this section.

(B) The notification may be submitted on EPA form 7710–56 ''Notice of Commencement of Manufacture;'' however, the manufacturer must add the statement required under paragraph (j)(6)(ii)(A) of this section that the notification is an amendment to the original exemption.

(C) The notification must contain an original signature of an authorized official of the manufacturer.

(k) *Customer notification.* (1) Manufacturers of new chemical substances described in paragraphs (c)(1) and (c)(2) of this section must notify processors and industrial users that the substance can be used only for the uses specified in the exemption notice at paragraph (e) of this section. The manufacturer must also inform processors and industrial users of any controls specified in the exemption notice. The manufacturer may notify processors and industrial users by means of a container labeling system, written notification, or any other method that adequately informs them of use restrictions or controls.

(2) A manufacturer of a new chemical substance described in paragraph (c)(2) of this section may distribute the chemical substance only to other persons who agree in writing to not further distribute the substance until it has been reacted, incorporated into an article, or otherwise rendered into a physical form or state in which environmental releases and human exposures above the eligibility criteria in paragraph (c)(2) of this section are not likely to occur.

(3) If the manufacturer learns that a direct or indirect customer is processing or using the new substance in violation of use restrictions or without imposing prescribed worker protection or environmental release controls, the manufacturer must cease distribution of the substance to the customer or the customer's supplier immediately unless the manufacturer is able to document each of the following:

(i) That the manufacturer has, within 5 working days, notified the customer in writing that the customer has failed to comply with the conditions specified in this section and the exemption notice under paragraph (e) of this section.

(ii) That, within 15 working days of notifying the customer of the noncompliance, the manufacturer received from the customer, in writing, a statement of assurance that the customer is aware of the terms of this section and the exemption notice and will comply with those terms.

(4) If, after receiving a statement of assurance from a customer under paragraph (k)(3)(ii) of this section, the manufacturer obtains knowledge that the customer has again failed to comply with any of the conditions specified in this section or the exemption notice, the manufacturer shall cease supplying the new chemical substance to that customer and shall report the failure to comply to EPA within 15 days of obtaining this knowledge. Within 30 days of its receipt of the report, EPA will notify the manufacturer whether, and under what conditions, distribution of the chemical substance to the customer may resume.

(l) *Confidentiality*. (1) If the manufacturer submits information to EPA under this section which the manufacturer claims to be confidential business information, the manufacturer must clearly identify the information at the time of submission to EPA by bracketing, circling, or underlining it and stamping it with ''CONFIDENTIAL'' or some other appropriate designation. Any information so identified will be treated in accordance with the procedures in part 2 of this chapter. Any information not claimed confidential at the time of submission may be made available to the public without further notice.

(2)(i) Any person who asserts a claim of confidentiality for chemical identity under this paragraph (l) must provide a generic chemical name that is only as generic as necessary to protect the confidential chemical identity of the particular chemical substance. The name should reveal the specific chemical identity to the maximum extent possible.

(ii) The generic name provided by the manufacturer will be subject to EPA review and approval in accordance with the procedures specified in §720.85(b)(6) of this chapter. The generic name provided by the submitter or an alternative selected by EPA under these procedures will be placed on a public list of substances exempt under this section.

(3) If any information is claimed confidential, the manufacturer must submit a second copy of the notice with all information claimed as confidential deleted. EPA will place the second copy in the public file.

(m) *Exemptions granted under superseded regulations.* Manufacturers holding exemptions granted under the superseded requirements of this section (as in effect on May 26, 1995) shall either continue to comply with those requirements (including the production volume limit) or apply for a new exemption pursuant to this section. EPA will not accept requests to amend exemptions granted under the superseded requirements; manufacturers wishing to amend such exemptions must submit a new exemption under paragraph (e) of this section. If a new exemption for a new chemical substance is granted under this exemption to the manufacturer holding an exemption under the superseded requirements, the exemption under the superseded requirements for such substance shall be void.

(n) *Recordkeeping.* (1) A manufacturer of a new chemical substance under paragraph (c) of this section must maintain the records described in this paragraph at the manufacturing site or site of importation for a period of 5 years after date of their preparation.

(2) The records must include the following to demonstrate compliance with this section:

(i) Records of annual production volume and import volume;

(ii) Records documenting complaince with the applicable requirements and restrictions of paragraphs (c), (e), (f), (h), (i), (j), and (k) of this section.

(3) Any person who manufactures a new chemical substance under the terms of this section must, upon request of a duly designated representative of EPA, permit such person at all reasonable times to have access to and to copy records kept under paragraph (n)(2) of this section.

(4) The manufacturer must submit the records listed in paragraph (n)(2) of this section to EPA upon written request. Manufacturers must provide these records within 15 working days of receipt of such request.

(o) *Compliance* . (1) Failure to comply with any provision of this section is a violation of section 15 of the Act (15 U.S.C. 2614).

(2) Submitting materially misleading or false information in connection with the requirements of any provision of this section is a violation of this section and therefore a violation of section 15 of the Act (15 U.S.C. 2614).

(3) Violators may be subject to the civil and criminal penalties in section 16 of the Act (15 U.S.C. 2615) for each violation.

(4) EPA may seek to enjoin the manufacture or processing of a chemical substance in violation of this section, or act to seize any chemical substance manufactured or processed in violation of this section, or take other action under the authority of section 7 of the Act (15 U.S.C. 2606) or section 17 of the Act (15 U.S.C. 1616).

[FR Doc. 95–7711 Filed 3–24–95; 3:32 pm]

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Federal Register

Wednesday
March 29, 1995

## Part IV

# Department of Labor

**29 CFR Part 270**

**Permanent Replacement of Lawfully Striking Employees by Federal Contractors; Proposed Rule**

**DEPARTMENT OF LABOR**

**29 CFR Part 270**

**RIN 1294–AA13**

## Office of the American Workplace; Permanent Replacement of Lawfully Striking Employees by Federal Contractors

**AGENCY:** Office of the American Workplace, Labor.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice of proposed rulemaking sets forth proposed regulations for implementing Executive Order 12954, which was signed by President Clinton on March 8, 1995 and became effective on that date, and was published in the **Federal Register** on March 10, 1995. Executive Order 12954 provides that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, federal contracting agencies shall not contract with employers that permanently replace lawfully striking employees.

**DATES:** Interested parties may submit written comments on this proposal by April 28, 1995.

**ADDRESSES:** Written comments should be submitted to the Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Smith, Special Assistant to the Deputy Secretary, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210, (202) 219–6045. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 8, 1995, President Clinton signed Executive Order 12954, ''Ensuring the Economical and Efficient Administration and Completion of Federal Government Contracts.'' In the Order, the President makes the finding that economy and efficiency in procurement are generally advanced by contracting with employers that do not permanently replace lawfully striking employees. That is, the permanent replacement of strikers can adversely affect a contractor's ability to reliably provide high quality goods and services, thereby adversely affecting the Federal Government's economy, efficiency, and cost of operations. The Order then states that ''[i]t is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration and completion of Federal Government contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees.'' The Order further states that all discretion under the Order is to be exercised in accordance with this policy.

The Order then establishes a flexible mechanism, based on case-by-case determinations, designed to ensure economy and efficiency in government procurement involving contractors that have permanently replaced lawfully striking employees. Under the Order, the Secretary of Labor is authorized to conduct investigations, either on the basis of a complaint or on his or her own initiative, and to hold hearings as he or she deems advisable in order to determine whether an organizational unit of a federal contractor has permanently replaced lawfully striking employees.

If the Secretary finds that an organizational unit of a federal contractor has permanently replaced lawfully striking employees, he or she may exercise either or both of two options. First, he or she may find that existing contracts should be terminated for convenience; the head of the contracting agency may object to that finding in writing and the termination for convenience shall not be issued.

Second, the Secretary may find that it is appropriate to debar the employer from future contracts and renewal of existing contracts until the labor dispute is resolved. However, a contracting agency may enter into a contract with the employer if there is a compelling reason to do so.

The Secretary has delegated his authority under the Order to the Assistant Secretary for the American Workplace in Secretary's Order No. 2–95, signed on March 8, 1995, and published in the **Federal Register** on March 13, 1995, 60 FR 13602.

### Administrative Notices

*A. Executive Order 12866*

The Department of Labor has determined that this rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866. The Department is issuing this rule in conformance with that Executive Order. The Department has determined that the potential benefits of this regulatory action outweigh the potential costs, and that the rule promotes the President's priorities. This rule does not meet the criteria of section 3(f)(1) of Executive Order 12866 and, therefore, the information in section 6(a)(3)(C) of that Executive Order is not required. This rule has been reviewed by the Office of Management and Budget.

*B. Regulatory Flexibility Act*

The Agency Head has certified that this rule is not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

*C. Paperwork Reduction Act*

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

### List of Subjects in 29 CFR Part 270

Administrative practice and procedure; Government contracts; Federal contractors and subcontractors.

Signed at Washington, D.C., this 24th day of March, 1995.

**Charles L. Smith,**

*Special Assistant to the Deputy Secretary.*

Accordingly, it is proposed to amend 29 CFR Chapter II by adding a new Part 270 as set forth below.

## PART 270—OBLIGATIONS OF FEDERAL CONTRACTING AGENCIES: PERMANENT REPLACEMENT OF LAWFULLY STRIKING EMPLOYEES

### Subpart A—Preliminary Matters

Sec.

270.1 Definitions.
270.2 Statement of policy.

### Subpart B—Enforcement

270.10 Complaints.
270.11 Investigations.
270.12 Findings by the Assistant Secretary.
270.13 Hearings.
270.14 Termination of contract for convenience.
270.15 Debarment.
270.16 Determination of resolution of labor dispute.

### Subpart C—Ancillary Matters

270.20 Cooperation with the Assistant Secretary.
270.21 Rulings and interpretations.
270.22 Delegation of authority by the Secretary.
270.23 General.

**Authority:** Executive Order No. 12954, 60 FR 13023, March 10, 1995; Secretary's Order No. 2–95, 60 FR 13602, March 13, 1995.

### Subpart A—Preliminary Matters

#### § 270.1 Definitions.

(a) *Affiliates* means business concerns, organizations, or individuals among which, directly or indirectly, either one controls or has the power to control the other, or a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management

or ownership, identity of interest among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

(b) *Assistant Secretary* means the Assistant Secretary of Labor for the American Workplace.

(c) *Contract* means a mutually binding agreement between the Government as a buyer, represented by a contracting agency, and a seller, where the seller agrees to furnish supplies or services (including construction) and the Government agrees to pay for them. It includes job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders under which the contract becomes effective by written acceptance or performance; and bilateral modifications to a contract, which increase the supplies or services to be delivered under the contract. For purposes of this part a contract is limited to agreements in which the Government agrees to pay an amount in excess of the Simplified Acquisition Threshold of $100,000 specified in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11). The term ''contract'' does not include agreements in which the parties stand in the relationship of employer and employee.

(d) *Contracting agency* means any executive department or independent establishment in the executive branch of the Government, including any wholly owned Government corporation.

(e) *Contractor* means a prime contractor.

(f) *Department* means the U.S. Department of Labor.

(g) *Deputy Assistant Secretary* means the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor.

(h) *Employee* includes any employee of an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, but does not include any individual having the status of an independent contractor or any individual employed as a supervisor.

(i) *Government* means the government of the United States of America.

(j) *Labor dispute* includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(k) *Lawfully striking employee* means an employee who is engaged in a strike that has not been finally adjudicated to be unlawful under any applicable federal, state, or local law.

(l) *Order* means Executive Order 12954, dated March 8, 1995 (60 FR 13023, March 10, 1995).

(m) *Organizational unit of a federal contractor includes:*

(1) A division or other organizational element of a person that is responsible as the prime contractor for performing a contract, and (2) Any other affiliate of the person that could provide the goods or services required to be provided under the contract.

(n) *Permanently replaced,* when used in connection with a lawfully striking employee, means that during a lawful strike the employer has placed an individual in the lawfully striking employee's position, and the striking employee does not have an unconditional right to reinstatement.

(o) *Person* means any natural person, corporation, partnership or joint venture, unincorporated association, state or local government, and any agency, instrumentality, or subdivision of such a government.

(p) *Prime contractor* means any person holding a contract with a contracting agency.

(q) *Secretary* means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

#### § 270.2 Statement of Policy.

(a) It is the policy of the Executive Branch of the Federal Government that in procuring goods and services, in order to ensure the economical and efficient administration and completion of contracts, contracting agencies shall not contract with employers that permanently replace lawfully striking employees.

(b) All discretion under the Order and this part shall be exercised consistent with this policy.

(c) The Order and this part apply only to contracts in excess of the Simplified Acquisition Threshold of $100,000 established in section 4(11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11).

### Subpart B—Enforcement

#### § 270.10 Complaints.

(a) Complaints may be filed by an employee of an organizational unit of a federal contractor, or his or her representative, alleging that the organizational unit has permanently replaced lawfully striking employees. All complaints should be filed with the Deputy Assistant Secretary for Labor-Management Programs, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–2203, Washington, DC 20210.

(b) The complaint must be in writing and should include the name, address, and telephone number of the complainant, the name and address of the organizational unit of the federal contractor alleged to have permanently replaced lawfully striking employees, an identification of the lawfully striking employees who were allegedly permanently replaced, and any other pertinent information which will assist in the investigation and resolution of the complaint.

#### § 270.11 Investigations.

The Deputy Assistant Secretary may cause an investigation to be conducted of an organizational unit of a federal contractor, regarding the permanent replacement of lawfully striking employees, on the basis of complaints filed with the Department, information submitted by other persons, or other available information. The Deputy Assistant Secretary shall notify the organizational unit of a federal contractor of the initiation of an investigation and the potential consequences under the Order. The Deputy Assistant Secretary may also cause a fact finding hearing to be conducted, either instead of or in addition to an investigation. The Deputy Assistant Secretary shall transmit the record, including a proposed finding of fact and a recommendation as to debarment and/or termination of a contract or contracts, to the Assistant Secretary.

#### § 270.12 Findings by the Assistant Secretary.

(a) Upon receipt of the record, the Assistant Secretary shall make a finding as to whether the organizational unit of the federal contractor has permanently replaced lawfully striking employees.

(b) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees, he or she shall determine whether it is appropriate to propose debarment.

(c) If the Assistant Secretary finds that the organizational unit of the federal contractor has permanently replaced lawfully striking employees after March 8, 1995, the effective date of the Order, he or she shall also determine whether

it is appropriate to propose termination for convenience of the contract or contracts of the organizational unit.

(d) If the Assistant Secretary proposes debarment and/or termination, he or she shall send the organizational unit a notice of proposed debarment and/or termination by certified mail, return receipt requested, advising the organizational unit of its right, within 15 days after receipt of the notice, to submit, in person, in writing, or through a representative, information and argument in opposition to debarment and/or termination.

**§ 270.13 Hearings.**

(a) If the Assistant Secretary finds that the submission by the organizational unit of a federal contractor in opposition to the proposed debarment and/or termination raises a genuine dispute over facts material to the proposed debarment and/or termination, the Assistant Secretary shall afford the organizational unit the opportunity to appear at an informal hearing. The Assistant Secretary or his or her designee shall preside over the proceeding.

(b) The Assistant Secretary shall make a decision on the proposed debarment and/or termination of a contract or contract based on the record.

**§ 270.14 Termination of contract for convenience.**

(a) Upon finding that termination of a contract or contracts for convenience is appropriate, the Assistant Secretary shall notify the organizational unit of a federal contractor by certified mail, return receipt requested, and shall transmit that finding to the head of any department or agency that contracts with the organizational unit.

(b) The head of the department or agency shall notify the Assistant Secretary in writing of those contracts that have been terminated for convenience pursuant to the Assistant Secretary's finding.

(c) If the head of the department or agency objects to the termination for convenience of a contract, he or she shall notify the Assistant Secretary in writing, promptly after receipt of the Assistant Secretary's finding, of the reasons for not terminating the contract and the termination for convenience shall not be issued.

**§ 270.15 Debarment.**

(a) The scope of any debarment normally will be limited to the organizational unit of a federal contractor that the Assistant Secretary has found to have permanently replaced lawfully striking employees.

(b) Upon finding that debarment is appropriate, the Assistant Secretary shall promptly notify the organizational unit of the federal contractor by certified mail, return receipt requested. The notice shall advise the organizational unit of the federal contractor:

(1) Of the effective date of the debarment;

(2) That the debarment will not extend beyond the date when the labor dispute precipitating the permanent replacement of lawfully striking employees has been resolved, as determined by the Assistant Secretary in accordance with § 270.16;

(3) That under the debarment, contracting agencies throughout the executive branch of the Government shall not contract or consent to subcontracts with the organizational unit of the federal contractor nor renew or otherwise extend the duration of current contracts, unless the head of a contracting agency or his or her designee determines that there is a compelling reason for such action.

(c) The Assistant Secretary shall notify the Administrator of the General Services Administration of the debarment and the Administrator shall include the contractor on the list of debarred contractors. The Assistant Secretary shall publish or cause to be published in the **Federal Register**, the names of contractors that have, in the judgment of the Assistant Secretary, permanently replaced lawfully striking employees and have been the subject of debarment. Departments and agencies shall not renew or otherwise extend the duration of current contracts or solicit offers from, award contracts to, or consent to subcontracts with these contractors unless the head of the agency or his or her designee determines, in writing, that there is compelling reason for such action.

**§ 270.16 Determination of Resolution of Labor Dispute.**

(a) The Assistant Secretary may cause an investigation to be conducted, on his or her own initiative or upon request by any person, to determine whether a labor dispute that resulted in debarment has been resolved. Among the factors or conditions that the Assistant Secretary may consider are:

(1) Whether the parties to the labor dispute have either reached a formal settlement or agreed on a procedure for resolving their differences;

(2) Whether the parties have agreed informally to end the labor dispute without the signing of a written agreement;

(3) Whether striking employees have returned to work;

(4) Any other relevant factors tending to lead to the conclusion that the labor dispute has ended.

(b) If the Assistant Secretary determines that the labor dispute has been resolved, he or she shall terminate the debarment and notify the public, federal agencies, federal contractors, and other interested persons, through publication in the **Federal Register** or otherwise, of this action.

## Subpart C—Ancillary Matters

**§ 270.20 Cooperation with the Assistant Secretary.**

Consistent with section 7 of the Order, each contracting agency shall cooperate with the Assistant Secretary and provide such information and assistance as the Assistant Secretary may require in the performance of the Assistant Secretary's functions under the Order and the regulations in this part.

**§ 270.21 Rulings and interpretations.**

Rulings under or interpretations of the Order or the regulations contained in this part shall be made by the Assistant Secretary or his or her designee.

**§ 270.22 Delegation of Authority by the Secretary.**

Consistent with section 8 of the Order, the Secretary may delegate any function or duty of the Secretary under this Order to any officer in the Department or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

**§ 270.23 General.**

(a) The regulations in this part implement Executive Order 12954 only and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Consistent with section 10 of the Order, nothing contained in the Order or this part, or promulgated pursuant to the Order or this part, is intended to confer any substantive or procedural right, benefit, or privilege enforceable at law by a party against the United States, its agencies or instrumentalities, its officers, or its employees.

[FR Doc. 95–7732 Filed 3–24–95; 4:09 pm]

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Part V

# Department of Housing and Urban Development

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 594 and 595**

**John Heinz Neighborhood Development Program; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of the Assistant Secretary for Community Planning and Development**

**24 CFR Parts 594 and 595**

**[Docket No. R–95–1665; FR–3389–F–02]**

**RIN 2506–AB48**

## John Heinz Neighborhood Development Program

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Final rule.

**SUMMARY:** The John Heinz Neighborhood Development Program was established as a permanent program in the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program. Pending this final rule, the permanent program has been implemented through Notices of Funding Availability (NOFAs) published in the **Federal Register**. The most recent NOFA was published on February 24, 1995.

This final rule establishes the requirements applicable to the permanent program and contains HUD's responses to comments received on the proposed rule. The rule, which takes effect before the deadline for applications under the February 24 NOFA, will govern that NOFA and future funding competitions that may be announced from time to time.

**EFFECTIVE DATE:** April 28, 1995.

**FOR FURTHER INFORMATION CONTACT:** Gene Hix, Grant Officer, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7218, 451 Seventh Street SW., Washington, D.C. 20410; telephone number (202) 708–2186. The TDD number is (202) 708–1455. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The control number for information collections described in this document is 2535–0084.

### Background

Section 832 of the Housing and Community Development Act of 1992 (42 U.S.C. 5318a) established the John Heinz Neighborhood Development Program as a permanent program of the Department. Previously, the program had been authorized and operated as a demonstration program, pursuant to section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note). On June 8, 1993 (58 FR 32210), HUD published a proposed rule addressing requirements of the permanent program. This proposed rule referenced a notice of funding availability (NOFA) that was published on the same day as the proposed rule (58 FR 32215) and invited public comment on the announced requirements.

### Discussion of Public Comments

The Department received only one comment in response to the proposed rule. The comment, from the National Neighborhood Coalition, incorporated four separate points that are addressed in this section of the preamble.

(1) *Neighborhood resident participation.* The commenter stated that two conditions are critical to the success and sustainability of the organization and projects that it undertakes. The comment emphasized the importance of both participation by residents of the neighborhood and a governing body whose composition reflects the demographic characteristics of the neighborhood. HUD agrees with this observation, and the final rule indicates that NOFAs developed for this program will give appropriate weight to this factor.

(2) *Neighborhood Development Funding Organizations (NDFO).* Another comment questioned the requirement that an applicant obtain the participation of an NDFO (bank) located within the neighborhood, noting that a number of organizations do not have bank branches located within their neighborhoods. The final rule clarifies this requirement by omitting any requirement that the NDFO be located within the neighborhood.

(3) *Record of past performance of an applicant.* Another comment suggested that the record of past performance of an applicant is a critical factor. HUD took this comment into consideration, but believes that the record of past performance is adequately reflected in other factors. The final rule is unchanged on this point.

(4) *Smaller Grants to Fledgling Organizations.* The commenter also suggested that HUD make smaller grants in the $5,000 to $20,000 range to fledgling organizations to help them get started. HUD already has the authority to make smaller grants to these organizations; therefore, the final rule is unchanged on this point.

### Removal of Part 595

Currently 24 CFR part 595 contains regulations for the Neighborhood Self-Help Development Program. Although this program was conceptually similar to the John Heinz Neighborhood Development Program, the authorizing legislation for the Neighborhood Self-Help Development Program was repealed in 1981 (42 U.S.C. 8121 note, 95 Stat. 398). Therefore, the Department is removing part 595 from the Code of Federal Regulations, in order to avoid confusion about the status of that program.

### Other Matters

*Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The program implemented by this rule will provide incentive funds to encourage neighborhood organizations to become more self-sufficient in their development activities.

*Executive Order 12606, the Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the program implemented by this rule is to improve neighborhood opportunities relating to employment, business, housing, and the provision of essential services, all of which could benefit families significantly. However, because the impact on families is indirect and beneficial, no further review is considered necessary.

*Environmental Review*

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the

initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule establishes program regulations for the award of grants to neighborhood development organizations for the purpose of supporting local efforts to improve opportunities relating to employment, business, housing, and services within the participating neighborhoods.

*Semiannual Agenda of Regulations*

This rule was listed as Item No. 1842 in the Department's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632, 57663), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

The Federal Domestic Assistance Catalog number for this program is 14.242.

**List of Subjects**

*24 CFR Part 594*

Community development, Grant programs—housing and community development, Reporting and recordkeeping requirements, Urban renewal.

*24 CFR Part 595*

Community development, Grant programs—housing and community development, Urban renewal.

Accordingly, and under the authority of 42 U.S.C. 3535(d), 24 CFR chapter V is amended as follows:

1. Part 594 is added to read as follows:

## PART 594—JOHN HEINZ NEIGHBORHOOD DEVELOPMENT PROGRAM

**Subpart A—General**

Sec.

594.1 Applicability and purpose.
594.3 Definitions.

**Subpart B—Eligibility**

594.5 Eligible applicants.
594.7 Other threshold requirements.
594.10 Eligible activities.

**Subpart C—Funding Allocation and Criteria**

594.15 Allocation amounts.
594.17 General criteria for competitive selection.

**Subpart D—Award and Use of Grant Amounts**

594.20 Submission procedures.
594.23 Approval and certification procedures.
594.25 Project administration.
594.28 Environmental reviews.
594.30 Equal opportunity and other Federal requirements.

**Authority:** 42 U.S.C. 3535(d) and 5318a.

### Subpart A—General

#### § 594.1 Applicability and purpose.

(a) *General.* This part establishes as a permanent program the John Heinz Neighborhood Development Program, as authorized by section 832 of the Housing and Community Development Act of 1992. Previously, the program had been administered by the Department as a demonstration program under Section 123 of the Housing and Urban-Rural Recovery Act of 1983 (42 U.S.C. 5318 note).

(b) *Purpose.* The program is intended to assist communities to become more viable, by providing incentive funds to carry out neighborhood development activities that benefit low- and moderate-income families. The program objectives are to increase the capacity of neighborhood organizations, promote long-term financial support for their neighborhood projects, and encourage greater participation of neighborhood organizations with private and public institutions.

#### § 594.3 Definitions.

*Empowerment zone* means an area designated by HUD as an Empowerment Zone under 26 U.S.C. 1391–1393.

*Enterprise community* means an area designated by HUD as an Enterprise Community under 26 U.S.C. 1391–1393.

*Grantee* means an eligible neighborhood organization that executes a grant agreement with HUD under this part.

*HUD* means the Department of Housing and Urban Development.

*Low- and moderate-income persons* means families and individuals whose incomes do not exceed 80 percent of the median income for the area, as determined by the Secretary of HUD in accordance with 42 U.S.C. 5302(a)(20).

*Neighborhood development funding organization* means:

(1) A depository institution, the accounts of which are insured pursuant to the Federal Deposit Insurance Act, 12 U.S.C. 1811 et seq., or the Federal Credit Union Act, 12 U.S.C. 1751 et seq., and any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof;

(2) A depository institution holding company and any subsidiary (as such term is defined in 12 U.S.C. 1813(w)) thereof; or

(3) A company at least 75 percent of the common stock of which is owned by one or more insured depository institutions or depository institution holding companies.

*Neighborhood development organization* means the same as the term is defined in § 594.5.

*Rural neighborhoods.* In small cities with under 10,000 in population and in rural areas, a neighborhood area can be the same unit as the unit of general local government.

*Unit of general local government* means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; the Federated States of Micronesia; the Marshall Islands; or a general purpose political subdivision thereof.

### Subpart B—Eligibility

#### § 594.5 Eligible applicants.

(a) *General requirements.* To be eligible under this program, a neighborhood development organization must be located within the neighborhood for which assistance is to be provided. It cannot be a city-wide consortium, or, in general, an organization serving a large area of the city. The applicant must meet all of the following requirements:

(1) The organization must be incorporated as a private, voluntary, nonprofit corporation under the laws of the State in which it operates;

(2) The organization must be responsible through a governing body to the residents of the neighborhood it serves, and not less than 51 percent of the members of the governing body must be residents of the neighborhood;

(3) The organization must have conducted business for at least one year;

(4) The organization must operate within an area that meets at least one of the following criteria:

(i) The area meets the requirements for Federal assistance under section 119 of the Housing and Community Development Act of 1974, 42 U.S.C. 5318;

(ii) The area is designated as an Enterprise Community or Empowerment Zone under Federal law as enacted;

(iii) The area is designated as an enterprise zone under State law and is recognized by the Secretary as a State enterprise zone for purposes of this part; or

(iv) The area is a qualified distressed community within the meaning of section 233(b)(1) of the Bank Enterprise Act of 1991, 12 U.S.C. 1834a(b)(1); and

(5) The organization must have conducted one or more eligible neighborhood development activities that primarily benefit low- and moderate-income persons.

(b) *Special eligibility.* Any facility that provides small entrepreneurial business with affordable shared support services and business development services and that meets the requirements of paragraph (a) of this section may also be eligible to participate in this program.

**§ 594.7 Other threshold requirements.**

In addition, an applicant must meet the following threshold requirements:

(a) Specify a management business plan for accomplishing one or more of the eligible activities specified in § 594.10;

(b) Specify a strategy for achieving greater long-term private sector support, especially in cooperation with a neighborhood development funding organization; and

(c) Specify a strategy for increasing the capacity of the applicant.

**§ 594.10 Eligible activities.**

Eligible activities include, but are not limited to, the following:

(a) Developing economic development activities that include:

(1) Creating permanent jobs in the neighborhood; or

(2) Establishing or expanding businesses within the neighborhood;

(b) Developing new housing, rehabilitating existing housing, or managing housing stock within the neighborhood;

(c) Developing delivery mechanisms for essential services that have lasting benefits to the neighborhood; and

(d) Planning, promoting, or financing voluntary neighborhood improvement efforts.

## Subpart C—Funding Allocation and Criteria

**§ 594.15 Allocation amounts.**

(a) *Amounts and match requirement.* HUD will make grants, in the form of matching funds, to eligible neighborhood development organizations. HUD reserves the right to make grants for less than the maximum amount established by statute, and to limit the number of times a previous grantee can receive funding. A Federal matching ratio will be established for each grantee in accordance with the statutory requirement that the highest ratios be established for neighborhoods having the greatest degree of economic distress or the smallest number of households.

(b) *Administrative costs.* The Secretary may use no more than 5 percent of the funds appropriated for the program for administrative or other expenses in connection with the program.

**§ 594.17 General criteria for competitive selection.**

(a) *Criteria.* HUD will use the following general criteria for selecting and ranking applications for all competitions for John Heinz Neighborhood Development Program funds. The relative values for the criteria will be indicated in each NOFA:

(1) The degree of economic distress and the benefit to low- and moderate-income residents of the neighborhood;

(2) The past performance in carrying out eligible activities, and staff capability;

(3) The quality of the Management/Business Plan;

(4) The evidence of coordination and resident participation; and

(5) The quality of the strategy to increase the capacity of the organization and the strategy developed for meeting long-term financial needs.

(b) *Geographic diversity.* The Department also reserves the right to fund applicants in other than rank order, for the purpose of achieving geographic balance.

## Subpart D—Award and Use of Grant Amounts

**§ 594.20 Submission procedures.**

(a) *Use of NOFAs.* The Department will publish a Notice of Funding Availability (NOFA) in the **Federal Register** for each funding competition under this program, indicating the objective of the competition; the amount of funding available; the application procedures, including the eligible applicants and activities to be funded; and any special conditions applicable to the competition, including the requirements for the match. The NOFA also will describe the maximum points to be awarded under each evaluation criterion, for the purpose of ranking applications, and any special factors to be considered in assigning the points to each criterion.

(b) Applications shall be submitted in accordance with the time, place, and content described in the NOFA.

(Approved by the Office of Management and Budget under control number 2535–0084)

**§ 594.23 Approval and certification procedures.**

(a) *Approval of application.* HUD's acceptance of an application for review does not imply a commitment to provide funding. HUD will provide notification of whether a project will be funded in accordance with the criteria and procedures set out in the applicable NOFA.

(b) *Certifications.* In the absence of independent evidence that tends to challenge in a substantial manner the certifications made by the applicant pursuant to § 594.30, the required certifications will be accepted by HUD.

However, if independent evidence is available that tends to challenge in a substantial manner an applicant's certification, HUD may require further information or assurances to be submitted in order to determine whether the applicant's certification is satisfactory.

**§ 594.25 Project administration.**

Project administration will be governed by the terms of the grant agreement.

**§ 594.28 Environmental reviews.**

(a) For all proposed actions or activities that are not considered categorically excluded under 24 CFR 50.20, HUD will perform the appropriate environmental reviews under the National Environmental Policy Act (NEPA).

(b) Whether the action or activity is categorically excluded from NEPA review or not, HUD will comply also with other applicable requirements of environmental statutes, Executive Orders, and HUD standards listed in 24 CFR 50.4. The environmental reviews will be performed before award of a grant. Grantees shall adhere to all assurances applicable to environmental concerns as contained in the RFGA and grant agreements.

**§ 594.30 Equal opportunity and other Federal requirements.**

Each participating neighborhood development organization must certify that it will carry out activities assisted under the program in compliance with:

(a) The requirements of the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR parts 100, 108, 109, 110, and 115; part 200, subpart M; and Executive Order 11063 (Equal Opportunity in Housing) (3 CFR, 1958–1963 Comp., p. 652) and implementing regulations at 24 CFR Part 107; and applicable provisions of the Civil Rights Act of 1964, 42 U.S.C. 2000a et seq., including Title VI (42 U.S.C. 2000d) (Nondiscrimination in

Federally Assisted Programs) and its implementing regulations at 24 CFR part 1;

(b) The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146; the prohibition against discrimination against individuals with a disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; and the requirements of Executive Order 11246 (Equal Employment Opportunity) (3 CFR, 1964–1965 Comp., p. 339) and the implementing regulations issued at 41 CFR chapter 60;

(c) The requirements of section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u, and implementing regulations at 24 CFR part 135;

(d) The requirements of Executive Order 11625 (3 CFR, 1971–1975 Comp., p. 616), Executive Order 12138 (3 CFR, 1979 Comp., p. 393), and Executive Order 12432 (3 CFR, 1983 Comp., p. 198). Consistent with HUD's responsibilities under these Orders, the grantee must make efforts to encourage the use of minority and women's business enterprises in connection with activities funded;

(e) The prohibitions against discrimination and related requirements of section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309);

(f) The requirements of the Americans with Disabilities Act (42 U.S.C. 12181–12189) and implementing regulations at 28 CFR part 36, as applicable;

(g) The Consolidated Plan of the appropriate unit of general local government; and

(h) Other Federal requirements as specified in the applicable NOFA and application kit.

## PART 595—[REMOVED AND RESERVED]

2. Part 595 is removed and reserved.

Dated: March 16, 1995.

**Andrew Cuomo,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 95–7402 Filed 3–28–95; 8:45 am]

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