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Friday
May 5, 1995

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Presidential Documents

Title 3—

The President

Proclamation 6795 of May 3, 1995

Asian/Pacific American Heritage Month, 1995

By the President of the United States of America

A Proclamation

Like so many people of this Nation, Americans of Asian and Pacific ancestry enjoy dual heritage-the great cultures of the lands of their forebearers and the rich traditions of liberty and equality cherished by the United States. Bringing new values and customs to these shores, Asian and Pacific Americans have immeasurably enriched the quality and character of this country. In every field of endeavor, in public and private sector alike, they have endowed our Nation with unparalleled energy and vision.

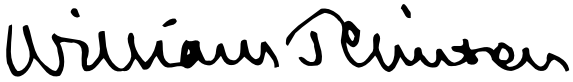
We owe a debt of gratitude to these Americans, both for the gift of their talents and for helping us build bridges of understanding to their ancestral lands in the Pacific Community—bridges that help our economies to grow and that widen the path to peace.

Today, our Nation stands at the dawn of a new era of hope and opportunity. We depend as never before on the active involvement of every one of our people to meet the challenges of our changing world. With the strength of our diversity and a continued commitment to the ideal of freedom, all Americans will share in the blessings of the bright future that awaits us.

To honor the achievements of Asian/Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102-450, has designated the month of May as ''Asian/Pacific American Heritage Month.''

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1995, as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.



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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 185

RIN 3206–AF43

Implementation of the Program Fraud Civil Remedies Act of 1986

AGENCY: Office of Personnel Management.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published on Friday, February 10, 1995, (60 FR 7891). The regulations provide procedures to implement the Program Fraud Civil Remedies Act of 1986.

EFFECTIVE DATE: March 13, 1995.

FOR FURTHER INFORMATION CONTACT: Murray M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

SUPPLEMENTARY INFORMATION: On February 10, 1995, OPM published final regulations to implement the Program Fraud Civil Remedies Act of 1986. On April 12, 1995, OPM was advised by an official from the West Publishing Company that a typographical error had resulted in the omission of a portion of one of the sections. This document corrects that omission.

Correction

In rule document 95–3347 beginning on page 7891 in the issue of Friday, February 10, 1995, make the following correction:

On page 7899, in the second column, correct § 185.139(g) to read as follows:

§ 185.139 Appeal to authority head.

* * * * *

(g) In reviewing the initial decision, the authority head shall not consider any objection that was not raised before the ALJ unless the objecting party can demonstrate extraordinary circumstances causing the failure to raise the objection.

* * * * *

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–11075 Filed 5–4–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF THE TREASURY

5 CFR Chapter XXI

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Department), with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule establishing uniform supplemental standards of ethical conduct for the officers and employees of the Department. The final rule is a necessary supplement to the Executive Branch-wide Standards because it addresses ethical issues unique to the Department. The final rule is effective upon publication and establishes regulations relating to: The designation of agency components for purposes of the rules concerning gifts and teaching, speaking and writing; prohibitions on the ownership of certain financial interests; prohibitions on certain forms of borrowing and extensions of credit; prohibitions on recommendations concerning certain securities and services of certain types of professionals; limitations on purchases of assets controlled by the Department or related to Department operations; and restrictions on outside employment and business activities.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Stephen J. McHale, Henry H. Booth, or R. Peter Rittling, Office of the Assistant General Counsel (General Law and Ethics), Department of the Treasury, telephone (202) 622–0450, FAX (202) 622–1176, e-mail Peter.Rittling@treas.sprint.com.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

On Tuesday August 3, 1993, the Department, with OGE's concurrence, published for comment a proposed rule to establish supplemental standards of ethical conduct for all Treasury Department employees (58 FR 41193–41203). The proposed rule was intended to supplement the Standards of Ethical Conduct for Employees of the Executive Branch published by OGE on August 7, 1992, and effective February 3, 1993 (5 CFR Part 2635; *see also* the grace period extensions at 59 FR 4779–4780, Feb. 2, 1994, and 60 FR 6390–6391, Feb. 2, 1995). The proposed rule was issued pursuant to 5 CFR 2635.105, which authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. The Department, with OGE's concurrence, determined that the supplemental regulations contained in the proposed rule were necessary to implement the Department's ethics program successfully, considering the Department's unique programs and operations.

The proposed rule prescribed a 30-day comment period and invited comments from all interested parties. The Department received timely comments from six sources, considered each comment carefully, and made appropriate modifications to the rule. The Department, with OGE's concurrence, is now publishing as a final rule the Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury, to be codified at a new part 3101, Title 5 of the Code of Federal Regulations.

In a separate rule making, the Department is issuing as an interim rule the Department of the Treasury Employee Rules of Conduct. The Rules of Conduct will be codified at 31 CFR Part 0 and will prescribe Department-specific employee rules of conduct and procedure.

II. Summary of the Comments

The Department received comments from two Department employees, two private financial institutions and two bureaus of the Department. The comments, discussed more fully below, fall into two general categories. The comments received from the Department employees and the financial

institutions asked for guidance on the application of either the rule in general or a specific section of the rule. The bureaus' comments recommended substantive changes to certain sections of the rule that applied specifically to their employees. After the comment period closed, certain offices in the Department requested changes to § 3101.103 to make it more restrictive and to increase its coverage to include an employee's spouse and minor children. The suggested changes are being reviewed and may be implemented in the future by amending the rule. At this time, however, this section applies only to Department employees.

III. Analysis of the Comments

One Department employee asked whether the final rule will apply retroactively. The employee was concerned that the final rule, once effective, would be used to discipline employees for actions taken before the effective date of the final rule. The final rule applies prospectively only.

Another Department employee asked whether § 3101.103, which prohibits Department employees from purchasing, either directly or indirectly, certain Government owned or controlled property, would apply to the relatives and friends of Department employees. Section 3101.103 applies only to Department employees. However, a Department employee may not circumvent the prohibition by having a friend or relative purchase property for the employee's use or possession that the employee would otherwise be prohibited from purchasing. This is considered an indirect purchase and is prohibited by § 3101.103.

Two private financial institutions submitted comments asking whether the final rule will apply to the employees of private financial institutions. As stated in the Summary section of the proposed rule, the regulations will apply only to the officers and employees of the Department of the Treasury, with specific provisions also applicable to certain members of their families. This has not been changed; therefore, the final rule does not apply to private financial institutions or their employees.

Finally, two bureaus of the Department, the OCC and the OTS, submitted comments recommending substantive changes to specific sections of the rule that will apply exclusively to their employees. All changes were incorporated into the final rule. In general, many of the regulations specific to OTS and OCC employees included in this rule are based on old OCC and OTS conduct regulations which predate and were displaced by the Executive Branch-wide Standards. These changes fixed inconsistencies between the new regulations and the old regulations on which they are based.

The first change we made was to § 3101.109(c)(3)(iii). Section 3101.109(c)(3)(iii) prescribes an exception to the OTS borrowing prohibition contained in § 3101.109(c). As proposed, the exception would have permitted an OTS employee to obtain a loan or extension of credit by assuming a mortgage loan on a personal residence without first obtaining approval from the bureau. In the final rule, the exception is retained but modified to require the employee to obtain the prior approval of the Chief Counsel, a Regional Director, Regional Deputy Director, or designee before securing a loan or extension of credit under this exception.

We also revised § 3101.109(c)(4). As proposed, § 3101.109(c)(4) would have permitted covered OTS employees, their spouses and minor children, to retain preexisting credit in only three specific situations. In the final rule, § 3101.109(c)(4) is revised to permit the retention of preexisting credit in a fourth situation. As modified, a covered employee, or a spouse or a minor child, may retain preexisting credit if the credit was extended before April 30, 1991, the date on which the borrowing prohibition included in § 3101.109(c) was first implemented in the old OTS conduct rules. This final rule continues the OTS borrowing prohibition; therefore, it is necessary to include the exception for preexisting credit obtained before April 30, 1991, the date that the prohibition originally took effect.

In the proposed rule, the prohibition on the purchase of assets in § 3101.109(f), applied to all OTS employees, their spouses and minor children. In the final rule, the prohibition in § 3101.109(f) was modified to apply only to ''covered'' OTS employees, their spouses and minor children. The reason for the modification was to make § 3101.109(f) consistent with a similar prohibition contained in the old OTS conduct rules. The term covered OTS employee is defined in § 3101.109(a).

In a joint comment, both the OTS and the OCC recommended changing certain language in the exception to the prohibitions against owning certain financial interests. All recommended changes were incorporated into the final rule.

Under §§ 3101.108(a) and 3101.109(b) of the final rule, OCC employees and covered OTS employees are prohibited from owning the securities of entities regulated by their respective bureaus. However, under §§ 3101.108(a)(3)(i) and 3101.109(b)(3)(i), which are nearly the same for the OCC and the OTS, an OCC or covered OTS employee may invest in a publicly traded or publicly available ''mutual fund or other collective investment fund or in a widely held pension or similar fund'' if the fund does not invest more than ''25 percent'' of its ''assets'' in the securities of ''one or more'' regulated entities.

In general, the revised exception describes in greater detail the types of funds in which an employee is permitted to invest. In the proposed rule, the exception was limited to ''publicly traded or publicly available investment fund[s].'' Now, under the modified exception, a covered employee may invest in a ''publicly traded or publicly available mutual fund or other collective investment fund,'' including a registered investment company like a money market fund, unit investment trust, or other publicly traded or publicly available pooled investment fund, or a ''widely held pension or similar fund,'' such as a deferred compensation plan administered by a corporation for its employees.

Additionally, the effect of the exception, as revised, is to prohibit an employee from investing in a fund that invests more than 25 percent of its assets in the securities of one or more regulated entities. This modification simplifies the restriction contained in the proposed rule that would have prohibited an employee from investing in a fund that invested more than 5 percent of its assets in the securities of one regulated entity or more than 20 percent of its assets in the securities of a regulated industry. The 25 percent limitation is based upon current security law and policy, including the definition of a diversified management company and the investment industry concentration limit contained in §§ 5(b) and 8(b), respectively, of the Investment Company Act of 1940 (15 U.S.C. 80a–5(b), 80a–8(b)). Overall, the changes to §§ 3101.108(a) and 3101.109(b)(3) will clarify the standards employees must follow in making personal investments.

IV. Change in the Final Rule

Section 3101.102 lists the components of the Department that are designated as separate agencies for the purposes of the regulations contained in 5 CFR 2635.807 and subpart B of 5 CFR Part 2635. The United States Savings Bonds Division, which was listed as a separate agency in the proposed rule, is deleted from the list in the final rule because it was assumed into the Bureau of the Public

Debt after the proposed rule was published.

Consistent with the additional grace period extensions at 59 FR 4779–4780 and 60 FR 6390–6391, § 3101.111 has been modified to grandfather until no later than January 3, 1996, the Secret Service rules prohibiting certain kinds of outside employment.

V. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule is limited to agency organization, management and personnel matters; therefore, it is not subject to Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This rule affects only Federal employees and their immediate families.

List of Subjects in 5 CFR Part 3101

Conflict of interests, Government employees.

Dated: January 29, 1995.

Edward S. Knight,

General Counsel, Department of the Treasury.

Approved: February 28, 1995.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of the Treasury, in concurrence with the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XXI, consisting of part 3101, to read as follows:

CHAPTER XXI—DEPARTMENT OF THE TREASURY

PART 3101—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF THE TREASURY

Sec.

3101.101 General.
3101.102 Designation of separate agency components.
3101.103 Prohibition on purchase of certain assets.
3101.104 Outside employment.
3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.
3101.106 Additional rules for Internal Revenue Service employees.
3101.107 Additional rules for Legal Division employees.
3101.108 Additional rules for Office of the Comptroller of the Currency employees.
3101.109 Additional rules for Office of Thrift Supervision employees.
3101.110 Additional rules for United States Customs Service employees.
3101.111 Additional rules for United States Secret Service employees.

Authority: 5 U.S.C. 301, 7301, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 7214(b); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 3101.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of the Treasury and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and bureau guidance and procedures established pursuant to this section. Department employees are also subject to any additional rules of conduct that the Department or their employing bureaus are authorized to issue. *See* 31 CFR part 0, Department of the Treasury Employee Rules of Conduct.

(b) *Bureau instructions.* With the concurrence of the Designated Agency Ethics Official (DAEO), bureaus of the Department of the Treasury are authorized to issue instructions or manual issuances providing explanatory guidance and establishing procedures necessary to implement this part and part 2635 of this title. *See* 5 CFR 2635.105(c).

(c) *Definition of ''agency designee''.* As used in this part and in part 2635 of this title, the term ''agency designee'' refers to any employee who has been delegated authority by an instruction or manual issuance issued by a bureau under paragraph (b) of this section to make a determination, give an approval, or take other action required or permitted by this part or part 2635 of this title with respect to another employee. *See* 5 CFR 2635.102(b).

§ 3101.102 Designation of separate agency components.

Pursuant to 5 CFR 2635.203(a), each of the following components of the Department of the Treasury is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635 governing gifts from outside sources and 5 CFR 2635.807 governing teaching, speaking or writing:

(a) Bureau of Alcohol, Tobacco and Firearms (ATF);

(b) Bureau of Engraving and Printing;

(c) Bureau of the Public Debt;

(d) Federal Law Enforcement Training Center;

(e) Financial Management Service;

(f) Internal Revenue Service (IRS);

(g) Office of the Comptroller of the Currency (OCC);

(h) Office of the Inspector General;

(i) Office of Thrift Supervision (OTS);

(j) United States Customs Service (USCS);

(k) United States Mint; and

(l) United States Secret Service.

For purposes of this section, employees in the Legal Division shall be considered to be part of the bureaus or offices in which they serve.

Note: As a result of the designations contained in this section, employees of the remaining parts of the Department of the Treasury (e.g., employees in Departmental Offices, including the Financial Crimes Enforcement Network) will also be treated as employees of an agency that is separate from all of the above listed bureaus and offices for purposes of determining whether the donor of a gift is a prohibited source under 5 CFR 2635.203(d) and for identifying an employee's ''agency'' under 5 CFR 2635.807 governing teaching, speaking and writing.

§ 3101.103 Prohibition on purchase of certain assets.

(a) *General prohibition.* Except as provided in paragraph (b) of this section, no employee of the Department of the Treasury shall purchase, directly or indirectly, property:

(1) Owned by the Government and under the control of the employee's bureau (or a bureau over which the employee exercises supervision); or

(2) Sold under the direction or incident to the functions of the employee's bureau.

(b) *Exceptions.* The prohibition in paragraph (a) of this section does not apply to the purchase of Government securities or items sold generally to the public at fixed prices, such as numismatic items produced by the United States Mint or foreign gifts deposited with the Department pursuant to 5 U.S.C. 7342 that an employee may purchase pursuant to 41 CFR part 101–49.

(c) *Waiver.* An employee may make a purchase otherwise prohibited by this section where a written waiver of the prohibition has been given to the employee by an agency designee with the advice and legal clearance of the DAEO, or the appropriate Office of Chief or Legal Counsel. Such a waiver may be granted only on a determination that the waiver is not otherwise prohibited by law and that, in the mind of a reasonable person with knowledge of the particular circumstances, the purchase of the asset will not raise a question as to whether the employee has used his or her official position or inside information to obtain an

advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties.

Note: Employees of the OCC and OTS are subject to additional limitations on the purchase of assets that are set out in bureau-specific rules contained in §§ 3101.108 and 3101.109.

§ 3101.104 Outside employment.

(a) *General requirement for prior approval.* All Department of the Treasury employees shall obtain prior written approval before engaging in any outside employment or business activities, with or without compensation, except to the extent that the employing bureau issues an instruction or manual issuance pursuant to paragraph (b) of this section exempting an activity or class of activities from this requirement. Approval shall be granted only on a determination that the employment or activity is not expected to involve conduct prohibited by statute, part 2635 of this title, or any provision of this part.

Note: Employees of the ATF, IRS, Legal Division, OCC, USCS and United States Secret Service are subject to additional limitations on outside employment and activities that are set out in bureau-specific rules contained in this part.

(b) *Bureau responsibilities.* Each bureau, which for the purposes of this section includes the Departmental Offices and the Office of the Inspector General, shall issue instructions or manual issuances governing the submission of requests for approval of outside employment or business activities and designating appropriate officials to act on such requests. The instructions or manual issuances may exempt categories of employment or activities from the prior approval requirement based on a determination that employment or activities within those categories would generally be approved and are not likely to involve conduct prohibited by statute, part 2635 of this title or any provision of this part. Bureaus may include in their instructions or issuances examples of outside employment or activities that are permissible or impermissible consistent with this part and part 2635 of this title. Bureaus shall retain in employees' Official Personnel Folders (temporary side) all requests for approval whether granted or denied.

§ 3101.105 Additional rules for Bureau of Alcohol, Tobacco and Firearms employees.

The following rules apply to the employees of the Bureau of Alcohol, Tobacco and Firearms and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited financial interests.* Except as provided in this section, no employee of the ATF, or spouse or minor child of an ATF employee, shall have, directly or indirectly, any financial interest, including compensated employment, in the alcohol, tobacco, firearms or explosives industries. The term financial interest is defined in § 2635.403(c) of this title.

(b) *Waiver.* An agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, may grant a written waiver of the prohibition in paragraph (a) of this section on a determination that the financial interest is not prohibited by 26 U.S.C. 7214(b) and that, in the mind of a reasonable person with knowledge of the particular circumstances, the financial interest will not create an appearance of misuse of position or loss of impartiality, or call into question the impartiality and objectivity with which the ATF's programs are administered. A waiver under this paragraph may require appropriate conditions, such as execution of a written disqualification.

§ 3101.106 Additional rules for Internal Revenue Service employees.

The following rules apply to the employees of the Internal Revenue Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibited recommendations.* Employees of the IRS shall not recommend, refer or suggest, specifically or by implication, any attorney, accountant, or firm of attorneys or accountants to any person in connection with any official business which involves or may involve the IRS.

(b) *Prohibited outside employment.* Involvement by an employee of the IRS in the following types of outside employment or business activities is prohibited and shall constitute a conflict with the employee's official duties pursuant to 5 CFR 2635.802:

(1) Performance of legal services involving Federal, State or local tax matters;

(2) Appearing on behalf of any taxpayer as a representative before any Federal, State, or local government agency, in an action involving a tax matter except on written authorization of the Commissioner of Internal Revenue;

(3) Engaging in accounting, or the use, analysis, and interpretation of financial records when such activity involves tax matters;

(4) Engaging in bookkeeping, the recording of transactions, or the record-making phase of accounting, when such activity is directly related to a tax determination; and

(5) Engaging in the preparation of tax returns for compensation, gift, or favor.

(c) *Seasonal employees.* Seasonal employees of the IRS while in non-duty status may engage in outside employment or activities other than those prohibited by paragraph (b) of this section without obtaining prior written permission.

§ 3101.107 Additional rules for Legal Division employees.

The following rules apply to the employees of the Legal Division and are in addition to §§ 3101.101 through 3101.104:

(a) *Application of rules of other bureaus.* In addition to the rule contained in paragraph (b) of this section, employees in the Legal Division shall be covered by the rules contained in this part that are applicable to employees of the bureaus or offices in which the Legal Division employees serve, subject to any instructions which the General Counsel or appropriate Chief or Legal Counsel may issue in accordance with § 3101.101(b).

(b) *Prohibited outside employment.* Pursuant to 5 CFR 2635.802, it is prohibited and shall constitute a conflict with the employee's official duties for an attorney employed in the Legal Division to engage in the outside practice of law that might require the attorney to:

(1) Take a position that is or appears to be in conflict with the interests of the Department of the Treasury which is the client to whom the attorney owes a professional responsibility; or

(2) Interpret any statute, regulation or rule administered or issued by the Department.

§ 3101.108 Additional rules for Office of the Comptroller of the Currency employees.

The following rules apply to the employees of the Office of the Comptroller of the Currency and are in addition to §§ 3101.101–3101.104:

(a) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (a)(3) and (g) of this section, no OCC employee, or spouse or minor child of an OCC employee, shall own, directly or indirectly, securities of any commercial bank (including both national and State-chartered banks) or commercial bank affiliate, including a bank holding company.

(2) *Definition of ''securities''.* For purposes of paragraphs (a)(1) and (a)(3) of this section, the term ''securities'' includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as

all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits an OCC employee, or spouse or minor child of an OCC employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more commercial banks (including both national and State-chartered banks) and commercial bank affiliates (including bank holding companies) and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in the publicly traded securities of a holding company of a nonbank bank or of a retailing firm that owns or sponsors a credit card bank as defined by the Competitive Equality Banking Act of 1987, except that an employee who owns such an interest must be disqualified from participating in the regulation or supervision of the nonbank bank or the credit card bank;

(iii) Using a commercial bank or commercial bank affiliate as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(b) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OCC employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any national bank or from an officer, director, employee, or subsidiary of any national bank.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (b)(1) of this section shall apply to the spouse or minor child of a covered OCC employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OCC employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Covered OCC employee.* For purposes of the prohibitions on borrowing contained in paragraphs (b)(1) and (b)(2) of this section, ''covered OCC employee'' means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on borrowing contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(4) *Exceptions.* Nothing in this section prohibits a covered OCC employee, or the spouse or minor child of a covered OCC employee, from obtaining a loan or extension of credit described in paragraphs (b)(4)(i) through (b)(4)(iii) of this section from a national bank if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the bank at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the bank. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a national bank where:

(A) The employee is assigned to a district office and the bank is not headquartered in the employee's district;

(B) The employee is assigned to the Multinational Division and the bank is not supervised by that Division; or

(C) The employee is assigned to the Washington office (other than the Multinational Division);

(ii) Through use of a national bank credit card sponsored by a retailing firm (e.g., Nordstrom, Lord and Taylor, Amoco Oil Company); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation.

(5) *Pre-existing credit.* This section does not prohibit a covered OCC employee, or spouse or minor child of a covered OCC employee, from retaining a loan from a national bank on its original terms if the loan was incurred prior to employment by the OCC or as a result of the sale or transfer of a loan to a national bank or the conversion or merger of the lender into a national bank. Any renewal or renegotiation of a pre-existing loan or extension of credit will be treated as a new loan subject to the prohibitions in paragraphs (b)(1) and (b)(2) of this section.

(c) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (c)(1) through (c)(7) of this section have securities that an OCC employee would be prohibited from having by paragraph (a) of this section, or loans or extensions of credit that a covered OCC employee would be prohibited from obtaining under paragraph (b) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title, or this part, including an appearance of misuse of position or loss of impartiality. This paragraph applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(d) *Prohibited recommendations.* Employees of the OCC shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale or other divestiture of securities of any commercial bank or commercial bank affiliate, including a bank holding company.

(e) *Prohibited purchase of assets.* No employee of the OCC, or spouse or

minor child of an OCC employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a national bank or national bank affiliate, including a bank holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(f) *Outside employment*—(1) *Prohibition on outside employment.* No covered OCC employee shall perform services for compensation for any bank, banking or loan association, or national bank affiliate, or for any officer, director or employee of, or for any person connected in any capacity with a bank, banking or loan association or national bank affiliate.

(2) *Covered OCC employee.* For purposes of the prohibitions on outside employment contained in paragraph (f)(1) of this section, ''covered OCC employee'' means:

(i) An OCC bank examiner; and

(ii) Any other OCC employee specified in an OCC instruction or manual issuance whose duties and responsibilities, as determined by the Comptroller of the Currency or his or her designee, require application of the prohibition on outside employment contained in this section to ensure public confidence that the OCC's programs are conducted impartially and objectively.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.109 Additional rules for Office of Thrift Supervision employees.

The following rules apply to the employees of the Office of Thrift Supervision and are in addition to §§ 3101.101 through 3101.104:

(a) *Covered OTS employee.* For purposes of this section, the term ''covered OTS employee'' means:

(1) An OTS examiner;

(2) An employee in a position at OTS grade 17 or above; and

(3) Any other OTS employee specified in an OTS instruction or manual issuance whose duties and responsibilities, as determined by the Director of the OTS or his or her designee, require application of the prohibitions contained in this section to ensure public confidence that the OTS's programs are conducted impartially and objectively.

(b) *Prohibited financial interests*—(1) *Prohibition.* Except as provided in paragraphs (b)(3) and (g) of this section, no covered OTS employee, or spouse or minor child of a covered OTS employee, shall own, directly or indirectly, securities of any OTS-regulated savings association or savings association holding company.

(2) *Definition of ''securities''.* For purposes of paragraphs (b)(1) and (b)(3) of this section, the term ''securities'' includes all interests in debt or equity instruments. The term includes, without limitation, secured and unsecured bonds, debentures, notes, securitized assets and commercial paper, as well as all types of preferred and common stock. The term encompasses both current and contingent ownership interests, including any beneficial or legal interest derived from a trust. It extends to any right to acquire or dispose of any long or short position in such securities and includes, without limitation, interests convertible into such securities, as well as options, rights, warrants, puts, calls, and straddles with respect thereto.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or spouse or minor child of a covered OTS employee, from:

(i) Investing in a publicly traded or publicly available mutual fund or other collective investment fund or in a widely held pension or similar fund provided that the fund does not invest more than 25 percent of its assets in securities of one or more OTS-regulated savings associations or savings association holding companies and the employee neither exercises control over nor has the ability to exercise control over the financial interests held in the fund;

(ii) Investing in certain non-financial holding companies whose principal business is unrelated to the financial services industry and which are identified as such on a list maintained by the Chief Counsel of the OTS;

(iii) Using a savings association as custodian or trustee of accounts containing tax-deferred retirement funds; or

(iv) Owning any security pursuant to a waiver granted under paragraph (g) of this section.

(c) *Prohibited borrowing*—(1) *Prohibition on employee borrowing.* Except as provided in this section, no covered OTS employee shall seek or obtain any loan or extension of credit, including credit obtained through the use of a credit card, from any OTS-regulated savings association or an officer, director, employee, or subsidiary of any such association.

(2) *Prohibition on borrowing by a spouse or minor child.* The prohibition in paragraph (c)(1) of this section shall apply to the spouse or minor child of a covered OTS employee unless the loan or extension of credit:

(i) Is supported only by the income or independent means of the spouse or minor child;

(ii) Is obtained on terms and conditions no more favorable than those offered to the general public; and

(iii) The covered OTS employee does not participate in the negotiation for the loan or serve as co-maker, endorser, or guarantor of the loan.

(3) *Exceptions.* Nothing in this section prohibits a covered OTS employee, or the spouse or minor child of a covered OTS employee, from obtaining a loan or extension of credit described in paragraphs (c)(3)(i) through (c)(3)(iii) of this section from an OTS-regulated savings association if the loan or extension of credit is obtained on terms and conditions no more favorable than those offered to the general public, the employee is not assigned to examine the savings association at the time the loan or extension of credit is obtained, and the employee submits to the Chief Counsel or designee a written disqualification from examining or otherwise participating in the supervision of the savings association. The exceptions provided by this paragraph are for loans or extensions of credit obtained:

(i) Through use of a credit card issued by a savings association where:

(A) The employee is assigned to a regional office and the savings association is not headquartered in the employee's region; or

(B) The employee is assigned to the Washington office;

(ii) Through use of a savings association credit card sponsored by a retailing firm (e.g., Sears); or

(iii) Through assumption of a mortgage loan on the employee's residence which is liquidated in accordance with its original terms without renewal or renegotiation, with prior approval from the Chief Counsel, a Regional Director, Regional Deputy Director or designee.

(4) *Pre-existing credit.* This section does not prohibit a covered OTS

employee, or spouse or minor child of a covered OTS employee, from retaining a loan from an OTS-regulated savings association on its original terms if the loan was incurred prior to April 30, 1991, or employment by the OTS, whichever date is later, or as a result of the sale or transfer of the loan to a savings association or the conversion or merger of the lender into an OTS-regulated savings association. Any renewal or renegotiation of a pre-existing loan or extension of credit is covered by paragraphs (c)(1) and (c)(2) of this section.

(d) *Restrictions arising from third party relationships.* If any of the entities listed in paragraphs (d)(1) through (d)(7) of this section have securities that a covered OTS employee would be prohibited from having by paragraph (b) of this section, or loans or extensions of credit that a covered OTS employee would be prohibited from obtaining under paragraph (c) of this section, the employee shall promptly report such interests to the Chief Counsel or designee. The Chief Counsel or designee may require the employee to terminate the third party relationship, undertake an appropriate disqualification, or take other appropriate action necessary, under the particular circumstances, to avoid a statutory violation or a violation of part 2635 of this title or this part, including an appearance of misuse of position or loss of impartiality. This paragraph (d) applies to any:

(1) Partnership in which the employee, or spouse or minor child of the employee, is a general partner;

(2) Partnership in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent limited partnership interest;

(3) Closely held corporation in which the employee, or spouse or minor child of the employee, individually or jointly holds more than a 10 percent equity interest;

(4) Trust in which the employee, or spouse or minor child of the employee, has a legal or beneficial interest;

(5) Investment club or similar informal investment arrangement between the employee, or spouse or minor child of the employee, and others;

(6) Qualified profit sharing, retirement or similar plan in which the employee, or spouse or minor child of the employee, has an interest; or

(7) Other entity if the employee, or spouse or minor child of the employee, individually or jointly holds more than a 25 percent equity interest.

(e) *Prohibited recommendations.* Employees of the OTS shall not make recommendations or suggestions, directly or indirectly, concerning the acquisition or sale, or other divestiture of securities of any OTS-regulated savings association or savings association holding company.

(f) *Prohibited purchase of assets.* No covered OTS employee, or spouse or minor child of a covered OTS employee, shall purchase, directly or indirectly, an asset (e.g., real property, automobiles, furniture, or similar items) from a savings association or savings association affiliate, including a savings association holding company, unless it is sold at a public auction or by other means which assure that the selling price is the asset's fair market value.

(g) *Waivers.* An agency designee may grant a written waiver from any provision of this section based on a determination made with the advice and legal clearance of the DAEO or Office of the Chief Counsel that the waiver is not inconsistent with part 2635 of this title or otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

§ 3101.110 Additional rules for United States Customs Service employees.

The following rules apply to the employees of the United States Customs Service and are in addition to §§ 3101.101 through 3101.104:

(a) *Prohibition on outside employment.* No employee of the USCS shall work for a customs broker, international carrier, bonded warehouse, foreign trade zone, cartman, law firm engaged in the practice of customs law or importation department of a business, nor be employed in any private capacity related to the importation or exportation of merchandise.

(b) *Restrictions arising from employment of relatives.* If the spouse of a USCS employee, or other relative who is dependent on or resides with a USCS employee, is employed in a position that the employee would be prohibited from occupying by paragraph (a) of this section, the employee shall file a report of family member employment with his or her supervisor. Supervisors shall forward such reports to the appropriate Regional Counsel for transmittal to the Chief Counsel. The employee shall be disqualified from participation in any matter involving the relative or the relative's employer unless an agency designee, with the advice and legal clearance of the DAEO or Office of the Chief Counsel, authorizes the employee to participate in the matter using the standard in § 2635.502(d) of this title.

§ 3101.111 Additional rules for United States Secret Service employees. [Reserved]

[FR Doc. 95–10941 Filed 5–4–95; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA–95–13]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Termination of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule terminates the advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania Federal milk order. Termination of the provisions was requested by several associations of dairy farmers whose milk is pooled under the order. Two comments were filed in response to the proposed termination, and both were in favor of terminating these provisions. Termination eliminates redundant expenses in administering regional advertising and promotion programs without affecting producers' participation.

EFFECTIVE DATE: Amendments 2 and 3 (§§ 1036.73 and 1036.105 through 1036.121) are effective July 1, 1995. Amendment 4 (§ 1036.122) is effective August 1, 1995.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Termination: Issued March 21, 1995; published March 24, 1995 (60 FR 15523).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has

certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on dairy farmers and will not affect milk handlers.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on March 24, 1995 (60 FR 15523) concerning a proposed termination of certain provisions of the order. Interested persons were afforded an opportunity to file written data, views and arguments thereon. Two comments supporting (and none opposing) the proposed termination were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

Sections 1036.105 through 1036.122, the undesignated center heading preceding them, and the reference to these provisions in § 1036.73.

Statement of Consideration

This rule terminates the advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania Federal milk order. Milk Marketing Inc. (MMI), Dairylea Cooperative Inc., and Tri-County Producers Cooperative, all associations of dairy farmers whose milk is pooled on the Eastern Ohio-Western Pennsylvania Federal milk order, requested termination of the provisions.

The cooperatives stated that the primary purpose of these provisions, at the time of their implementation, was to increase producer participation in the advertising and promotion of milk and dairy products. However, the Dairy and Tobacco Adjustment Act of 1983 mandated that all dairy farmers contribute to such activities through a national program that includes all Federal order marketing areas (7 CFR part 1150). The cooperatives asserted that the advertising and promotion provisions of the order are redundant and create unnecessary expenses in view of the existence of qualified regional programs that are funded under the national advertising and promotion program. The efficiency and effectiveness of producer funds would be enhanced with termination of the Federal order advertising and promotion provisions. Thus, the cooperatives requested removal of the advertising and promotion provisions to eliminate administrative costs without affecting the integrity of the Federal order program or the national Dairy Promotion Program.

Comments favoring the termination of the provisions were received from National Farmers Organization (NFO) and a dairy farmer whose milk is pooled on Order 36. NFO reiterated the comments made by the three proponent cooperatives. The dairy farmer's comments favored the proposed termination of the provisions.

The advertising and promotion provisions of the Eastern Ohio-Western Pennsylvania Federal order should be terminated. Termination of the aforesaid sections of Order 36 would reduce administrative costs of the Order, while funding for dairy research and promotion would be maintained via 7 CFR part 1150, the Dairy Promotion Program. In addition, producers whose milk is pooled under the order support elimination of these provisions.

Section 608c(16)(A) of the Act authorizing Federal milk orders provides that any order provisions may be terminated separately whenever the Secretary makes a determination that such provisions obstruct or do not tend to effectuate the declared policy of the Act.

Therefore, the aforesaid provisions of the order are hereby terminated.

List of Subjects in 7 CFR Part 1036

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1036, are amended as follows:

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. The authority citation for 7 CFR Part 1036 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1036.73 [Amended]

2. In § 1036.73, paragraph (a)(2)(iii) is amended, effective July 1, 1995, by adding the word ''and'', and paragraph (a)(2)(iv) is removed and reserved.

§§ 1036.105 through 1036.121 [Removed]

3. Sections 1036.105 through 1036.121 are removed, effective July 1, 1995.

§ 1036.122 [Removed]

4. Section 1036.122 and the undesignated center heading preceding it are removed, effective August 1, 1995.

Dated: May 1, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–11042 Filed 5–4–95; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–0877]

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its delegation rules to allow Federal Reserve Banks to approve certain public welfare investments by state member banks under the Board's Regulation H. This amendment should provide for more expeditious processing of these requests.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Stephanie Martin, Senior Attorney (202–452–3198), Legal Division; Sandra

Braunstein, Manager for Community Affairs (202–452–3378), Division of Consumer and Community Affairs; Larry Cunningham, Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202–452–2701); for users of the Telecommunications Device for the Deaf (TDD) only, Dorothea Thompson (202–452–3544); Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 9(23) of the Federal Reserve Act (12 U.S.C. 338a) allows state member banks, under certain conditions, to make investments designed primarily to promote the public welfare. Section 9(23) provides that public welfare investments must not violate state law or expose the bank to unlimited liability. Section 9(23) limits the aggregate of the bank's public welfare investments to 5 percent of the bank's capital stock and surplus, but allows the Board to increase this limit to as much as 10 percent on a case-by-case basis.

The Board's Regulation H (12 CFR 208.21) permits state member banks to make public welfare investments without prior approval if the investment is one that is listed in the regulation and if the bank meets the regulation's capital and condition requirements. Specifically, a state member bank may make an investment, without prior approval, that the Board or the Comptroller of the Currency (OCC) previously has determined to be a public welfare investment or that is an investment in a community development financial institution.[1] In addition, Regulation H allows state member banks to invest without prior approval in an entity established solely to engage in certain community development activities, such as low- and moderate-income housing, nonresidential real estate development, small business development, and job training.

In order to make a public welfare investment without prior approval, a state member bank must (1) Limit any single investment to not more than 2 percent of the bank's capital stock and surplus, (2) be at least adequately capitalized, (3) be rated a composite CAMEL ''1'' or ''2,'' (4) be rated at least ''satisfactory'' (i.e., ''2'') in its last consumer compliance examination, and (5) not be subject to any written agreement, cease and desist order, capital directive, or prompt corrective action directive.

The Board is delegating to the Federal Reserve Banks the authority to approve certain public welfare investments by state member banks that do not meet the ''no-prior-approval'' conditions in Regulation H. Specifically, Reserve Banks may approve investments that meet all the conditions in § 208.21(b) of Regulation H, except that:

- The bank's compliance rating is ''3;''
- The investment would exceed 2 percent (but not 5 percent) of the bank's capital and surplus; or
- The aggregate of all such investments of the bank exceeds 5 percent (but not 10 percent) of its capital stock and surplus.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(A)) exempts ''rules of agency organization, procedure, or practice'' from the notice of proposed rulemaking and public comment requirements. As the Board's delegation rules fall under this exemption, the Board is adopting these amendments without notice-and-comment procedures.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking, Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending 12 CFR Part 265 as set forth below:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

1. The authority citation for Part 265 continues to read as follows:

Authority: 12 U.S.C. 248 (i) and (k).

2. Section 265.11 is amended by adding a new paragraph (e)(12) to read as follows:

§ 265.11 Functions delegated to Federal Reserve Banks.

* * * * *

(e) * * *

(12) *Public welfare investments.* To permit a state member bank to make a public welfare investment that meets the conditions set forth in § 208.21(b)(1)–(8) of Regulation H (12 CFR 208), except that:

(i) The state member bank received an overall rating of ''3'' as of its most recent consumer compliance examination;

(ii) The investment exceeds 2 percent, but does not exceed 5 percent, of the state member bank's capital stock and surplus as defined under 12 CFR 250.162; or

(iii) The aggregate of all such investments of the state member bank exceeds 5 percent, but does not exceed 10 percent, of its capital stock and surplus as defined under 12 CFR 250.162.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 1, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–11087 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–P

[1] ''Community development financial institution'' is defined in the Community Development Banking and Financial Institutions Act of 1994 (Title I of Pub. L. 103–325, 108 Stat. 2160, section 103(5)).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. PL95–1–000]

Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates; Order No. 579

Issued April 26, 1995.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule amendment and confirmation of interim rules as final.

SUMMARY: On December 15, 1994, the Commission issued a Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates. In the Policy Statement, codified in § 2.25, the Commission set forth the elements of what generally constitutes appropriate ratemaking treatment of sulfur dioxide emissions allowances in coordination transactions under the Federal Power Act. The Interim Rule, codified in § 35.23, implemented the filing guidelines set forth in the Policy Statement.

This order is issued in response to comments on the Interim rule (§ 35.23). It clarifies the Policy Statement (§ 2.25) in certain respects and adopts the Interim Rule, without modification, as a Final Rule.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT:

Wayne W. Miller (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 208–0466

Moira Notargiacomo (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, Telephone: (202) 208–1079.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, 1200 or 300 bps, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this document will be available on CIPS for 60 days from the date of issuance in ASC II and WordPerfect 5.1 format. After 60 days, the document will be archived, but still accessible. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in Room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

On January 23, 1995, Illinois Power Company (Illinois Power), the Pennsylvania Public Utility Commission (Pennsylvania Commission), and the Edison Electric Institute (EEI) filed comments requesting clarification of the Policy Statement and Interim Rule issued on December 15, 1994.[1]

After considering the comments, the Federal Energy Regulatory Commission (Commission) is revising its Policy Statement on the Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Transactions. Specifically, the Commission is revising the Policy Statement to provide that public utilities may require customers to declare, no later than the beginning of the coordination transaction, whether they will pay for the cost of emission allowances reflected in the purchased electric energy or, in the alternative, deliver emissions allowances in time for ''true-up,'' [2] and to provide that public utilities may structure arrangements when customers provide allowances so as to remain risk neutral (*i.e.*, neutral as to risks of non-delivery). The Commission rejects Illinois Power's request to clarify the Policy Statement and Interim Rule to provide that selling public utilities need not designate indices in their rate filings. The Commission also addresses the Pennsylvania Commission's concerns regarding Federal and state jurisdiction over emissions allowance costs in wholesale and retail rates.

II. Public Reporting Burden

The Final Rule would clarify how existing filing requirements apply to public utilities filing amendments to coordination rate schedules to provide for the recovery of emissions allowance costs. Because this Final Rule only clarifies, and does not amend, how existing filing requirements are to be implemented, the public reporting burden for these information collections (including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information) is not estimated to increase the number of hours per response for each public utility currently involved in the filing of rate schedule amendments. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], and to the Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission), FAX: (202) 395–5167.

III. Background

On October 14, 1994, EEI filed a petition under section 207 of the Commission's Rules of Practice and Procedure,[3] requesting a policy statement regarding the ratemaking treatment of emissions allowances in coordination transactions under the Federal Power Act (FPA). EEI also requested the Commission to clarify that the sale or transfer of emissions allowances does not require Commission authorization under section 203 of the FPA and does not require filing under section 205 of the FPA.

In the Policy Statement, the Commission adopted, with certain modifications to reflect the concerns raised by intervenors, EEI's proposals. Specifically, the Commission found that it would allow the recovery of incremental costs of emissions allowances in coordination rates whenever the coordination rate also provides for recovery of other variable costs on an incremental basis. If a coordination rate does not reflect incremental cost pricing for other costs, the Commission stated that it would require the seller to propose an alternative costing method for emissions allowances, or demonstrate that any inconsistency between the proposed costing method and the coordination rate does not produce unreasonable results.

In support of these determinations, the Commission made a number of related findings. First, it found that the cost to replace an allowance is an appropriate basis to establish incremental cost. Second, the Commission found that sellers of emissions allowances should be permitted to choose their own index or a combination of indices, if done consistently, in pricing allowances in coordination transactions. Third, the Commission found that the use of incremental costing for emissions allowances should be consistent with the use of incremental costing for economic dispatch decisions, and stated that any differences between incremental costing for coordination sales and dispatch decisions regarding emissions allowances should be explained and reconciled. Fourth, the Commission found that sellers of emissions allowances should explain how they will compute the amount of emissions allowances that will be attributed to each coordination transaction. Fifth, the Commission found that public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances. The Commission stated that customers that choose to provide allowances in kind should be permitted to do so by the appropriate Environmental Protection Agency (EPA) reporting date.,[4] rather than at the time

[1] Policy Statement and Interim Rule Regarding Ratemaking Treatment of the Cost of Emissions Allowances in Coordination Rates, 59 FR 65930 (December 15, 1994), III FERC Stats. and Regs., Regulations Preambles ¶ 31,009 (1994).

[2] *See infra* note 4 (describing ''true-up'' requirements).

[3] 18 CFR 385.207.

[4] On January 30 (or the first subsequent business day) of each calendar year, EPA determines whether companies have the right number of emissions, allowances of appropriate vintage on hand for each ton of sulfur dioxide emitted during the previous calendar year. *See* Policy Statement and Interim Rule, III FERC States. and Regs., Regulations Preambles at 31,201, 31,203 n.18 Utilities must ''true up'' their emissions allowance accounts by the EPA reporting date so that they will have a sufficient number of allowances on hand to avoid EPA penalties. The penalty for not having the requisite number of allowances on hand by the EPA reporting date is $2,000 per ton plus surrender of

of the transaction. The Commission also stated that the seller should explain how fractional allowances will be handled, and suggested a ''rounding'' approach, *i.e.*, rounding up to the next whole number if the fraction is greater than one-half, or down if the fraction is less than one-half. Finally, the Commission stated that the ratemaking treatment of emissions allowance costs endorsed in the Policy Statement does not preclude other approaches proposed by individual public utilities on a case-by-case basis.

In the Interim Rule (codified in § 35.23 of its regulations), the Commission stated that if public utilities have rate schedules on file that expressly provide for the recovery of all incremental or out-of-pocket costs, these utilities may make abbreviated rate filings, limited to detailing how they would recover emissions allowance costs. Regarding coordination rates that do not provide for the recovery of all incremental costs, the Commission concluded that the public utility may include rate schedule amendments together with the abbreviated filing if customers agree to the rate change; if the customers do not agree to revise such rates, the Commission stated that the public utility must tender its emissions allowance proposal in a separate section 205 rate filing, fully justifying its proposal.

In a separate order disclaiming jurisdiction,[5] the Commission concluded that emissions allowances are not facilities subject to the Commission's jurisdiction under section 203. The Commission further concluded that a sale or transfer of emissions allowances does not require a filing under section 205 when that sale or transfer occurs outside of a sale by a public utility for resale in interstate commerce.

The Commission invited interested persons to submit additional written comments on the matters addressed in the Interim Rule by January 23, 1995. EEI, Illinois Power and the Pennsylvania Commission timely submitted comments. As explained in greater detail below, EEI and Illinois Power suggest clarification of the Policy Statement provision regarding timing. Illinois Power also suggests clarification of the Policy Statement and Interim Rule regarding the use of indices.[6]

The Pennsylvania Commission request clarification of the Interim Rule to state that the Rule applies to jurisdictional rates only, and does not contemplate preemption of the states' ratemaking treatment of emissions allowances.

IV. Discussion

A. Timing

EEI and Illinois Power maintain that the Policy Statement, as issued, could be construed to give customers the option of waiting until the ''true-up'' date to declare whether they will pay or return emissions allowances in kind.[7] Thus, EEI argues, utilities might not know how many allowances the customers would return until it is too late to avoid incurring EPA penalties.[8] EEI maintains that to assure that they have sufficient emissions allowances on hand, and thus avoid penalties, utilities would have to either: (1) tie up their own capital to create an allowance reserve, or (2) be prepared to purchase allowances at the last minute, possibly paying a premium in the form of a scarcity rent. To remedy this situation, EI suggests clarifying the Policy Statement to state that utilities may require customers, to declare, at or near the time of the coordination transaction (or earlier), whether they will pay or return emissions allowances in kind, and, if they return allowances in kind, the time at which they will do so.[9]

EEI further notes the public utilities face risks associated with the timing of the return of allowances in kind, including: (a) the risk that if a sale is arranged by a power broker or marketer, that entity may become insolvent and not deliver allowances; and (b) the risk associated with the failure of customers to settle their accounts within the standard billing period. For these reasons, EEI asks the Commission to clarify the Policy Statement to state that utilities may propose arrangements with their customers for indemnification from such risks.

Commission Ruling

In the Policy Statement and Interim Rule, the Commission stated that purchasing utilities that choose to return allowances in kind should be allowed to return the allowances by the appropriate EPA reporting date, rather than at the time of the transaction, *i.e.*, a ''timing option.'' However, if purchasing utilities wait until the time of ''true-up'' before declaring whether they will pay cash or return emissions allowances in kind, this accords the selling public utilities little, if any, opportunity to determine how many emissions allowances they will need to avoid EPA penalties. To remedy this situation, the Commission will clarify 18 CFR 2.25(e) to state that public utilities may require purchasing utilities to declare, no later than the beginning of the coordination transaction: (a) whether they will pay or return allowances in kind; and (b) if they return allowances in kind, to specify a date by which they will return the allowances.[10] The Commission also will clarify section 2.25(e) to state that public utilities may include, in their agreements, provisions to indemnify themselves if customers do not return allowances when they have declared they will do so.[11]

B. Use of Indices

Illinois Power argues that the requirement in the Policy Statement and Interim Rule (*see* 18 CFR 2.25(c)) that utilities use the same incremental cost index or indices in pricing coordination sales and in dispatch decisions (or

an emissions allowance equivalent in the following year, plus other possible punishments depending on the degree of violation. *Id.* at 31,201.

[5] Edison Electric Institute, 69 FERC ¶ 61,344 (1994).

[6] Illinois Power also refers to the findings in the Policy Statement and Interim Rule regarding the calculation of the amount of emissions allowances associated with a coordination transaction and reconciliation of inconsistencies in dispatch criteria, but does not suggest any modifications to these findings.

[7] Illinois Power notes the Commission's order in Southern Company Services, Inc., 69 FERC ¶61,437 (1994), *reh'g pending*, in which the Commission, consistent with the Policy Statement and Interim Rule, directed the Southern Companies to modify their submittal to allow customers that choose to return allowances in kind to do so up to the EPA reporting date rather than at the time of the transaction.

[8] *See supra* note 4.

[9] EEI emphasizes that because of EPA's administrative requirements, utilities must have the requisite number of allowances on hand several weeks before the ''true-up'' deadline. Similarly, Illinois Power argues that providing a utility the option to make an in-kind return of allowances ''up to the EPA reporting date,'' does not necessarily allow for sufficient time to complete a transfer through EPA's Allowance Tracking System. Illinois Power also argues that allowing customers who return allowances in kind to do so up to the EPA reporting date conflicts with payment terms previously established by mutual agreement of the affected parties.

[10] Such date should afford the selling public utility sufficient time to meet its requirements to EPA. The close of the calendar year would appear to be more than adequate. However, customers should be allowed to designate a date comparable to that which the utility itself would internally designate if it were purchasing allowances to meet its EPA requirements. In other words, the selling utility may not require its customers to provide allowances any earlier than the utility's internal deadlines for purchasing allowances to meet EPA requirements for the prior calendar year. Thus, if the public utility purchases allowances on, for example, January 15, we see no reason to require customers to provide allowances any earlier.

[11] Such indemnification provisions should be applied in a non-discriminatory manner. While EEI notes that power marketers and brokers may become insolvent, we note that such a entities are not the only entities that may become insolvent; a few traditional utilities have sought bankruptcy protection in recent years.

explain and justify the use of different indices for pricing coordination sales and dispatch) makes the source of the index irrelevant. Accordingly, Illinois Power argues, utilities should not be burdened with having to make rate filings with the Commission (*see* 18 CFR 35.23(b)) indicating their choice of indices.

Commission Ruling

We disagree. Public utilities must indicate their choice of indices so that the Commission can determine whether the selling utility is using consistent criteria for pricing coordination sales and in dispatch decisions. If the selling public utility is not using the same index in its dispatch decisions as in pricing coordination sales (or does not explain and justify the difference if it uses different indices), there is no assurance that the index reflects the utility's incremental costs. Also, if there is no requirement that the selling utility indicate the index or combination of indices to be used in its filing, the seller may simply choose an index with the highest price at the time of the transaction, rather than the index that best reflects its incremental cost. Finally, the index or indices must be filed since they are part of the formula rate. Accordingly, we will not clarify the Policy Statement and Interim Rule as Illinois Power requests.

C. Federal vs. State Jurisdiction

The Pennsylvania Commission commends this Commission for its prompt consideration of EEI's application and for expedited issuance in this proceeding of the Policy Statement and Interim Rule. Nevertheless, the Pennsylvania Commission expresses concern that the Commission did not fully address all jurisdictional issues arising from EEI's application.

Specifically, the Pennsylvania Commission expresses concern with the Commission's decision in the Policy Statement to allow utilities to value emissions allowances at their incremental price, based on a market index. The Pennsylvania Commission states that it fully understands, and does not challenge, the basis for this decision—to encourage the development of a vigorous trading market and to provide for consistent rate treatment for emissions allowances in coordination sales rates. The Pennsylvania Commission also states, however, that it is compelled under Pennsylvania state law to value emissions allowances on the basis of historic costs for retail ratemaking purposes. Citing ''jurisdictional uncertainty,'' the Pennsylvania Commission urges this Commission to clarify that the Policy Statement is limited in scope to Commission-jurisdictional rates and is not intended to preempt state ratemaking treatment of emissions allowances in state jurisdictional rates.

Commission Ruling

We clarify that the general jurisdictional pronouncements made in the Policy Statement and Interim Rule are intended to address only the Commission's consideration of FERC-jurisdictional rates. The Commission has not made any preemptive determination as to any ratemaking treatment of emissions allowances to be applied at the retail level by the States. Whether there would be any preemption would have to be determined based on the facts of a particular case.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[12] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[13] No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings that public utilities submit under sections 205 and 206 of the FPA and the establishment of just and reasonable rates.[14] Because this final rule involves such filings submitted under sections 205 and 206 of the FPA and the establishment of just and reasonable rates, no environmental consideration is necessary.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[15] requires rulemakings to either contain a description and analysis of the effect that the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most, if not all, of the entities that would be required to comply with this rule are large public utilities that do not fall within the RFA's definition of small entities,[16] the Commission certifies that this rule will not have a ''significant impact on a substantial number of small entities.''

VII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations[17] require that OMB approve certain information collection requirements imposed by an agency. This rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in Part 35; therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this rule to OMB for information purposes only.

VIII. Effective Date

This document adopts the interim rule in part 35 as final and amends the policy statement in part 2 effective June 5, 1995.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the interim rule amending 18 CFR Part 35 which was published at 59 FR 65930 on December 22, 1994, is adopted as a final rule without change and 18 CFR Part 2 which was amended as a final rule at 59 FR 65930 is further amended as set forth below.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

2. Part 2, § 2.25, is amended by revising § 2.25(e) to read as follows:

[12] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987).

[13] 18 CFR 380.4.

[14] 18 CFR 380.4(15).

[15] 5 U.S.C. 601–12.

[16] 5 U.S.C. 601(13) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[17] 5 CFR 1320.13.

§ 2.25 Ratemaking Treatment of Cost of Emissions Allowances in Coordination Transactions.

* * * * *

(e) *Timing.* (1) Public utilities should provide information to purchasing utilities regarding the timing of opportunities for purchasers to stipulate whether they will purchase or return emissions allowances. A public utility may require a purchasing utility to declare, no later than the beginning of the coordination transaction:

(i) whether it will purchase or return emissions allowances; and

(ii) if it will return emissions allowances, the date on which those allowances will be returned.

(2) Public utilities may include in agreements with purchasing utilities non-discriminatory provisions for indemnification if the purchasing utility fails to provide emissions allowances by the date on which it declares that the allowances will be returned.

* * * * *

[FR Doc. 95–10718 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

RAILROAD RETIREMENT BOARD

20 CFR Parts 226 and 232

RIN 3220–AA58

Computing Employee, Spouse, and Divorced Spouse Annuities

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises its regulations dealing with the computation of retirement annuities under the Railroad Retirement Act of 1974 (Act). The regulations regarding the computation of these annuities, which are being replaced, were promulgated under the Railroad Retirement Act of 1937 and no longer reflect the computational provisions contained in the Act.

EFFECTIVE DATE: May 5, 1995.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611, telephone (312) 751–4513, TTD (312) 751–4701.

SUPPLEMENTARY INFORMATION: The revision to part 226 (formerly ''Computation of Annuity'') provides the rules for computing the amount of the employee, spouse and divorced spouse annuity, under the Railroad Retirement Act of 1974. In general, the annuity consists of two components or tiers. The first tier (tier I) is a social security level benefit that is computed under social security rules based on the employee's earnings under both the railroad retirement and the social security systems and is reduced by the amount of any social security benefit payable. The second tier (tier II) is based solely on the employee's railroad earnings.

In limited circumstances the employee annuity may be increased by a ''vested dual benefit''. An employee who has completed 25 years of railroad service may also be eligible for a supplemental annuity.

The rule is divided into seven (7) subparts:

Subpart A sets forth definitions and lists other regulations related to this part.

Subpart B describes the computation of the employee annuity which includes the social security level component (tier I) (§ 226.10), the component based solely on railroad service (tier II) (§ 226.11); the vested dual benefit (§ 226.12), and a supplemental annuity (§ 226.16). Section 226.13 describes how cost-of-living increases apply to the annuity.

Subpart C (§§ 226.30–226.35) parallels subpart B and describes the computation of the spouse and divorced spouse annuities. However, the divorced spouse is not entitled to a tier II benefit and no supplemental annuity or vested dual benefits are payable to spouses. Section 226.31 explains how the spouse and divorced spouse annuity are reduced due to receipt of a public pension which was not based upon employment covered by the Social Security Act on the last day of employment.

Subpart D (§§ 226.50–226.52) describes the Railroad Retirement Family Maximum which is a statutory ''cap'' placed upon the total benefits payable under the RRA. Section 226.51 describes how the maximum is determined (the higher of $1,200 or an amount based upon the employee's final average monthly compensation (FAMC)). Section 226.52 describes how the ''reduction amount'' is computed when the maximum is exceeded and § 226.50 describes how the spouse, then the employee annuity is reduced until the total employee and spouse annuity equal the maximum. The railroad retirement maximum is computed at the employee's annuity beginning date but will be recomputed if the spouse later divorces the employee or the employee later becomes entitled to a vested dual benefit or supplemental annuity. A divorced spouse annuity is not counted in determining whether the RRA maximum is exceeded.

Subpart E (§§ 226.60–226.63) explains how years of service and average monthly compensation (AMC) are determined. The tier II of the employee annuity is seven tenths of 1% (.007) times the product of an employee's years of service times his or her AMC. The spouse's tier II is 45% of the employee's tier II. See §§ 226.11 and 226.32.

Subpart F (§§ 226.70–226.74) describes the reduction required due to receipt of workers' compensation benefits. The tier I of an employee, spouse, or divorced spouse annuity is reduced if the employee is under age 65 and is entitled to a disability annuity and another periodic benefit based upon disability pursuant to some other Federal or state law or plan (§ 226.70). The reduction amount is first applied to the tier I of any spouse or divorced spouse annuity payable, then to the employee tier I (§ 226.71). Certain disability payments do not cause a reduction. These are listed in § 226.72.

The formula for the reduction amount is found at § 226.71. The reduction provided for in this part applies if the total tier I components payable to the employee and spouse (or divorced spouse) plus workers' compensation or public disability benefit exceed 80% of the employee's prior average current earnings. Section 226.73 explains what events cause a change in the reduction amount. Section 226.74 provides that ''average current earnings'' must be recomputed periodically to take into account inflation. The redetermined average current earnings are used only if it results in a lower reduction amount.

Subpart G of the rule (§§ 226.90–226.92) explains how and when an annuity is recomputed to take into account railroad service and social security earnings after an annuitant retires.

PART 232—SPOUSES' ANNUITIES is obsolete and is removed.

On February 9, 1995, the Board published this rule as a proposed rule (60 FR 7729), inviting comments on or before March 13, 1995. No comments were received.

The Board, in conjunction with the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 226 and Part 232

Pensions, Railroad employees, Railroad retirement.

1. For the reasons set out in the preamble, part 226 of title 20 of the Code of Federal Regulations (formerly ''Computation of Annuity'') is revised as follows:

PART 226—COMPUTING EMPLOYEE, SPOUSE, AND DIVORCED SPOUSE ANNUITIES

Subpart A—General

Sec.
226.1 Introduction.
226.2 Definitions.
226.3 Other regulations related to this part.

Subpart B—Computing An Employee Annuity

226.10 Employee tier I.
226.11 Employee tier II.
226.12 Employee vested dual benefit.
226.13 Cost-of-living increase in employee vested dual benefit.
226.14 Employee regular annuity rate.
226.15 Deductions from employee regular annuity rate.
226.16 Supplemental annuity.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

226.30 Spouse or divorced spouse tier I.
226.31 Reduction for public pension.
226.32 Spouse tier II.
226.33 Spouse regular annuity rate.
226.34 Divorced spouse regular annuity rate.
226.35 Deductions from regular annuity rate.

Subpart D—Railroad Retirement Family Maximum

226.50 General.
226.51 Maximum monthly amount.
226.52 Total annuity subject to maximum.

Subpart E—Years of Service and Average Monthly Compensation

226.60 General.
226.61 Use of military service.
226.62 Computing the average monthly compensation.
226.63 Determining monthly compensation.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State, or Local Law or Plan

226.70 General.
226.71 Initial reduction.
226.72 Benefits that do not cause a reduction.
226.73 Changes in reduction amount.
226.74 Redetermination of reduction.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

226.90 When recomputation applies.
226.91 How an employee annuity rate is recomputed.
226.92 Effect of recomputation on spouse and divorced spouse annuity.

Authority: 45 U.S.C. 231f(b)(5).

Subpart A—General

§ 226.1 Introduction.

This part explains how employee, spouse, and divorced spouse annuities are computed. It describes how to determine the years of railroad service and average monthly compensation used in computing the employee annuity rate. The railroad retirement family maximum, cost-of-living increases, and the recomputation of an annuity to include additional railroad earnings are also explained in this part.

§ 226.2 Definitions.

Except as otherwise expressly noted, as used in this part—

Annuity means a payment due an entitled individual for a calendar month and payable to him or her on the first day of the following month.

Eligible means that an individual meets all the requirements for payment of an annuity but has not yet applied for one.

Employee means an individual who is or has been in the service of an employer as defined in part 202 of this chapter.

Entitled means that an individual has applied for and has established his or her rights to benefits.

Railroad Retirement Act means the Railroad Retirement Act of 1974, as amended.

Retirement age means, with respect to an employee, spouse or divorced spouse who attains age 62 before January 1, 2000, age 65. For an employee, spouse or divorced spouse who attains age 62 after December 31, 1999, retirement age means the age provided for in section 216(l) of the Social Security Act.

Social Security Act means the Social Security Act as amended.

§ 226.3 Other regulations related to this part.

This part is closely related to part 216 of this chapter, which describes when an employee, spouse, or divorced spouse is eligible for an annuity, part 225 of this chapter, which explains the primary insurance amounts (PIA's) used in computing the employee, spouse and divorced spouse annuity rates, and part 229 of this chapter, which describes when and how employee and spouse annuities can be increased under the social security overall minimum. The creditable service and compensation used in determining the years of service and average monthly compensation are explained in parts 210 and 211 of this chapter. The beginning and ending dates of annuities are explained in part 218 of this chapter.

Subpart B—Computing an Employee Annuity

§ 226.10 Employee tier I.

Tier I of an employee annuity is an amount similar to the social security benefit the employee would receive based on combined railroad and social security earnings. The tier I benefit is computed as follows:

(a) A tier I PIA is computed based on combined railroad and social security earnings, as shown in § 225.11 of this chapter. This PIA is adjusted for any delayed retirement credits or cost-of-living increases, as shown in subparts D and E of part 225 of this chapter, and is reduced for receipt of a pension based upon non-covered service in accordance with section 215(a)(7) of the Social Security Act. The tier I of a disability annuity may also be adjusted for other benefits based on disability, as shown in §§ 226.70–226.74 of this part. Except in the case of an employee who retires at age 60 with 30 years of service, if the result is not a multiple of $1, it is rounded to the next lower multiple of $1. In the case of an employee who retires with an age reduced annuity based upon 30 years of service (see § 216.31 of this chapter) the tier I is not rounded until all reductions have been made.

(b) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) of this section is multiplied by a fraction for each month the employee is under retirement age on the annuity beginning date. The result is subtracted from the rate in paragraph (a) of this section. At present the fraction is 5/9 of 1% (or 1/180). If the employee retires before age 62 with at least 30 years of service, the employee is deemed age 62 for age reduction purposes and a 20% reduction is applied. This reduction remains in effect until the first full month throughout which the employee is age 62, at which time the tier I is recomputed to reflect interim increases in the national wage levels and the age reduction factor is recomputed, if necessary, in accordance with this paragraph.

(c) The amount from paragraph (a) or (b) of this section is reduced by the amount of any monthly benefit payable to the employee under title II of the Social Security Act, including any social security benefit payable under a totalization agreement between the Social Security Administration and another country. The social security benefit used to reduce the tier I may be an age or disability benefit on the employee's own earnings record, a benefit based on the earnings record of

another person, or the total of two types of benefits. The amount of the social security benefit used to reduce tier I is before any deduction for excess earnings. It is after any reduction for other benefits based on disability. The result cannot be less than zero.

(d) The tier I is subject to automatic annual increases as provided for in subpart E of part 225 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an age annuity effective October 1, 1982. Retirement age for individuals born in 1919 is age 65. He has less than 30 years of service. His tier I PIA Is $712.60, which is rounded down to $712. Since the employee is 25 months under age 65 when his annuity begins, $712 is multiplied by 25/180 (1/180 for each month under age 65), to produce an age reduction of $98.89, and a tier I rate after age reduction of $613.11. The employee is also entitled to a social security benefit of $190 a month. The employee's final tier I rate is $423.11.

§ 226.11 Employee tier II.

The tier II of an employee annuity is based only on railroad service. For annuities awarded after September 1981, the tier II benefit is computed as follows:

(a) The product obtained by multiplying the employee's creditable years of service by the average monthly compensation, determined as shown in subpart E of this part, is multiplied by seven-tenths of 1 percent (.007).

(b) If the employee is entitled to a vested dual benefit (see § 226.12 of this part), the result from paragraph (a) of this section is reduced by 25 percent of the vested dual benefit amount. This reduction is made before reduction of the tier II benefit for age. The result cannot be less than zero.

(c) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the amount from paragraph (a) or (b) of this section is reduced by the smaller of—

(1) The difference between the total railroad retirement maximum reduction amount and the reductions in the spouse and supplemental annuities; or

(2) The total tier II amount from paragraph (a) or (b) of this section.

(d) If the employee is entitled to a reduced age annuity (see § 216.31 of this chapter), the rate from paragraph (a) through (c) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to a reduced age annuity (see § 216.31 of this chapter), the age reduction only applies to the tier I component; no age reduction applies to the tier II component.

(e) The total tier II amount (paragraphs (a) through (d) of this section), is increased by 32.5 percent of the percentage increase in the cost-of-living increase to the tier I annuity component. Each cost-of-living increase is paid only to an employee whose annuity begins on or before the effective date of the increase. The increases are effective on the same date as any cost-of-living increase to the tier I annuity component.

§ 226.12 Employee vested dual benefit.

(a) *General.* An employee vested dual benefit is payable, in addition to tiers I and II, to an employee who meets one of the following requirements:

(1) *Employee worked in the railroad industry in 1974.* An employee who worked for a railroad in 1974 and retired after 1974 is considered vested if on December 31, 1974, he or she had both 10 years of railroad service and sufficient quarters of coverage under the Social Security Act to qualify for a social security benefit. An employee qualified on this basis is eligible for vested dual benefit amounts computed on his or her railroad and social security credits through December 31, 1974.

(2) *Employee who did not work for a railroad in 1974.* An employee who did not work in the railroad industry in 1974, but who had 25 or more years of railroad service before 1975 or a current connection with the railroad industry on December 31, 1974, as defined in part 216 of this chapter, or a current connection when he or she retired, is also considered vested under the same conditions as an employee who had worked in the railroad industry in 1974.

(3) *An employee who completed 10 years or more years of railroad service (but less than 25) before 1975 but left the industry before 1975 and did not have a current connection on December 31, 1974 or when he or she retired.* Such an employee is considered vested only if he or she had sufficient social security quarters of coverage to qualify for a social security retirement benefit as of the end of the year prior to 1975 in which he or she left the railroad industry. The vested dual benefit amount is based only on credits acquired through the last year of pre-1975 railroad service instead of through December 31, 1974.

(b) *Computation.* The employee vested dual benefit is computed as follows:

(1) The combined earnings dual benefit PIA is subtracted from the total of the railroad earnings dual benefit PIA and the social security earnings dual benefit PIA (see part 225 of this chapter for an explanation of these PIA's).

(2) The result from paragraph (b)(l) of this section is adjusted for any applicable cost-of-living increase, as shown in § 226.13 of this part.

(3) If the employee is entitled to a reduced age annuity (see § 216.1 of this chapter), the rate from paragraph (b)(2) of this section is reduced in the same manner as the tier I as provided for in § 226.10 of this part. In the case of an employee with 30 years of service who is entitled to an annuity reduced for age, the age reduction applies only to the tier I component; no age reduction applies to the vested dual benefit.

(4) The vested dual benefit payable in a given year may also be reduced for insufficient funding as shown in part 233 of this chapter.

Example: An employee born on November 3, 1919, becomes entitled to an annuity including a vested dual benefit on October 1, 1982. His combined earnings dual benefit PIA is $254.90, his railroad earnings dual benefit PIA is $93.80, and his social security earnings dual benefit PIA is $244.70. The vested dual benefit before cost-of-living increase is $83.60 ($93.80 + $244.70 −$254.90 = $83.60). A cost-of-living increase of $67.72 (81 percent of $83.60. See § 226.13 of this part) results in a vested dual benefit of $151.32. Retirement age for a person born in 1919 is age 65. Since the employee is 25 months under age 65 when the annuity begins, $151.32 is multiplied by 25/180, to produce an age reduction of $21.02 and a vested dual benefit rate after age reduction of $130.30.

§ 226.13 Cost-of-living increase in employee vested dual benefit.

If the employee's annuity begins June 1, 1975 or later, a cost-of-living increase is added to the total vested dual benefit amount. This increase is based on the cost-of-living increases in social security benefits during the period from January 1, 1975, to the earlier of the date the employee's annuity begins or January 1, 1982. The increases are effective on June 1 of each year through 1981. The percentage increase for annuities that begin June 1, 1981, or later is 81 percent.

§ 226.14 Employee regular annuity rate.

The regular annuity rate payable to the employee is the total of the employee tier I, tier II, and vested dual benefit amounts, from §§ 226.10–226.12.

§ 226.15 Deductions from employee regular annuity rate.

The employee annuity as computed under this subpart may be reduced by premiums required for supplemental medicare coverage, income tax withholding, recovery of debts due the Federal government, garnishment pursuant to part 350 of the chapter and

property awards as provided for in part 295 of this chapter.

§ 226.16 Supplemental annuity.

A supplemental annuity is payable in addition to tiers I and II and the vested dual benefit to an employee who meets the requirements of § 216.41 of this chapter. The supplemental annuity is equal to $23 plus $4 for each full year of service, over 25 years of service, up to a maximum of $43. The supplemental annuity may be reduced by the railroad retirement family maximum as shown in §§ 226.50–226.52 of this part, or for the receipt of a private pension benefit as explained in part 227 of this chapter.

Subpart C—Computing a Spouse or Divorced Spouse Annuity

§ 226.30 Spouse or divorced spouse tier I.

(a) *General.* The tier I of a spouse or divorced spouse annuity is an amount similar to the social security benefit the spouse or divorced spouse would receive based on the employee's combined railroad and social security earnings. In the case of an employee who retires before age 62 with 30 years of service, the spouse tier I is simply 50% of the employee tier I until the first month throughout which both the employee and spouse are age 62 at which time the tier I is an amount similar to the social security benefit on the employee's combined railroad and social security earnings.

(b) *Reduction for other disability benefits.* The spouse or divorced spouse tier I may be adjusted for other disability benefits received by a disabled employee, as shown in §§ 226.70–226.74 of this part.

(c) *Reduction for government pension.* The amount in paragraphs (a) or (b) of this section is reduced (but not below zero) by the amount of any government pension payable on the spouse's or divorced spouse's earnings record, as described in § 226.31 of this part.

(d) *Rounding.* The last tier I rate from paragraph (a), (b) or (c) of this section, if not a multiple of $1, is rounded to the next lower multiple of $1. However, in cases in which the spouse is in receipt of an age reduced 60/30 annuity or in which the employee with 30 years of service began a disability annuity July 1, 1984, or later, the spouse tier I is not rounded until all reductions have been made. See § 226.10(a).

(e) *Age reduction.* If the spouse or divorced spouse is entitled to a reduced age annuity (see §§ 216.51 and 216.52 of this chapter), the rounded tier I rate from paragraph (d) of this section is multiplied by a fraction for each month the spouse or divorced spouse is under retirement age on the date the annuity begins. The result is subtracted from the rate from paragraph (d) of this section. At present the fraction is 25/36 of 1% (or 1/144). In the case of an employee with 30 years of service who is awarded a disability annuity on July 1, 1984, or later, where the spouse does not have a child of the employee under age 18 in care, the spouse tier I is reduced for each month the spouse is under retirement age on the date the spouse annuity begins. If the spouse is age 60 or 61, he or she is deemed to be age 62 for purposes of the age reduction. The age reduction is applied before reduction for a government pension.

(f) *Reduction for social security benefit.* The previous tier I rate, from paragraph (d) or (e) of this section, is reduced by the amount of any monthly benefit payable to the spouse or divorced spouse under title II of the Social Security Act. The social security benefit used to reduce tier I may be an age or disability benefit on the spouse's or divorced spouse's own earnings record, a benefit based on the earnings record of another person, or the total of two types of benefits. The result cannot be less than zero.

(g) *Reduction for employee annuity.* If the spouse or divorced spouse is entitled to an employee annuity on his or her own wage record, the spouse or divorced spouse tier I is reduced for the spouse's own employee annuity as follows:

(1) *Spouse.* If either the employee or the spouse had some railroad service before 1975, the previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the spouse's own employee tier I rate, as computed under § 226.10 of this part. If both the employee and spouse began railroad service after 1974, the spouse's total annuity rate, as shown in § 226.33, is reduced (but not below zero) by the spouse's own employee total annuity rate, as shown in § 226.14. These reductions are effective from the later of the date the employee or spouse annuity begins.

(2) *Divorced spouse.* The previous tier I rate from paragraphs (d) through (f) of this section, whichever applies, is reduced (but not below zero) by the divorced spouse's own employee total annuity rate as shown in § 226.14.

Example: The computation of the spouse tier I may be illustrated as follows: A railroad employee's wife who was born on September 16, 1920 becomes entitled to a spouse annuity on October 1, 1982. She is also entitled to a social security benefit of $190 a month effective October 1, 1982. Her husband's employee tier I PIA is $712.60. The spouse tier I is $356.30 (50 percent of $712.60). This is rounded down to $356. Since she is 35 months under age 65, the present retirement age when the annuity begins, $356 is multiplied by 35/144, to produce an age reduction of $86.53 and a tier I rate after age reduction of $269.47. Her final tier I rate effective October 1, 1982, after reduction for social security benefits, is $79.47 ($269.47 − $190.00).

§ 226.31 Reduction for public pension.

(a) The tier I annuity component of an spouse/divorced spouse annuity, as described in the preceding sections of this part, is reduced if the spouse/divorced spouse is in receipt of a public pension.

(b) *When reduction is required.* Unless the spouse or divorced spouse annuity meets one of the exceptions in paragraph (d) of this section, the tier I annuity component is reduced each month the annuitant is receiving a monthly pension from a Federal, state, or local government agency (government pension), but excluding a pension paid by a government of a foreign country, for which he or she was employed in work not covered by social security on the last day of such employment. For purposes of this section, Federal government employees are not considered to be covered by social security if they are covered for Medicare but are not otherwise covered by social security.

(c) *Payment in a lump sum.* If the government pension is not paid monthly or is paid in a lump-sum payment, the Board will determine how much the pension would be if it were paid monthly and then reduce the monthly railroad retirement annuity accordingly. The number of years covered by a lump-sum payment and thus the period when the annuity will be reduced, will generally be clear from the pension plan. If one of the alternatives to a lump-sum payment is a life annuity, and the amount of the monthly benefit for the life annuity can be determined, the reduction will be based on that monthly benefit amount. Where the period or the equivalent monthly pension benefit is not clear, it may be necessary for the Board to determine the reduction period on an individual basis.

(d) *Exceptions.* The reduction does not apply:

(1) If the annuitant is receiving a government pension based on employment for an interstate instrumentality; or

(2) If the annuitant receives or is eligible to receive a government pension for one or more months in the period December 1977 through November 1982 and he or she meets the requirements

for social security benefits that were applied in January 1977 (even though he or she did not actually claim such benefits nor become entitled to such benefits until a later month). The January 1977 requirements are, for a man, a one-half support test (see paragraph (e) of this section), and, for a woman claiming benefits as a divorced spouse, marriage for at least 20 years to the insured worker. A person is considered eligible for a government pension for any month in which he or she meets all the requirements for payment except that he or she is working or has not applied; or

(3) If the annuitant was receiving or eligible (as defined in paragraph (d)(2) of this section) to receive a government pension for one or more months before July 1983, and he or she meets the one-half support test (see paragraph (e) of this section). If the annuitant meets the exception in this paragraph but he or she does not meet the exception in paragraph (d)(2) of this section, December 1982 is the earliest month for which the reduction will not affect his benefits; or

(4) If the annuitant has been eligible for a government pension in a given month except for a requirement which delayed eligibility for such pension until the month following the month in which all other requirements were met, the Board will consider the annuitant to be eligible in that given month for the purpose of meeting one of the exceptions in paragraphs (d)(2) and (d)(3) of this section. If the annuitant meets an exception solely because of this paragraph, his or her benefits will be unreduced for months after November 1984 only.

(e) *The one-half support test.* For a man to meet the January 1977 requirement as provided in the exception in paragraph (d)(2) of this section and for a man or a woman to meet the exception in paragraph (d)(3) of this section, he or she must meet a one-half support test. One-half support is defined in part 222 of this chapter. One-half support must be met at one of the following times:

(1) If the employee upon whose compensation the spouse or divorced spouse annuity is based had a period of disability, as defined in part 220 of this chapter, which did not end before he or she became entitled to an age and service or disability annuity, the spouse/divorced spouse annuitant must have been receiving at least one-half support from the employee either—

(i) At the beginning of the employee's period of disability; or

(ii) At the time the employee became entitled to an age and service or disability annuity.

(2) If the employee upon whose compensation the spouse or divorced spouse annuity is based did not have a period of disability, as defined in part 220 of this chapter, at the time of his or her entitlement, the spouse or divorced spouse annuitant must have been receiving at least one-half support from the employee at the time the employee became entitled to an age and service or disability annuity.

(f) *Amount of reduction.* (1) If the spouse/divorced spouse annuitant becomes eligible for a government pension after June 1983, the Board will reduce (to zero, if necessary) the tier I annuity component by two-thirds of the amount of the monthly pension. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(2) If the spouse/divorced spouse annuitant became eligible for a government pension before July 1983 and he or she did not meet one of the exceptions in paragraph (d) of this section, the Board will reduce (to zero, if necessary) the tier I component by the full amount of the pension for months before December 1984 and by two-thirds the amount of his or her monthly pension for months after November 1984. If the amount of the reduction is not a multiple of 10 cents, it will be rounded to the next higher multiple of 10 cents.

(g) *Reduction not applicable.* This reduction is not applied to claimants who both filed and were entitled to a spouse benefit prior to December 1977.

§ 226.32 Spouse tier II.

The spouse tier II benefit is computed as follows:

(a) The employee's tier II amount as computed under § 226.11 of this part, after any reduction for entitlement to a vested dual benefit but before reduction for the railroad retirement family maximum, is multiplied by 45 percent. The spouse tier II is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit after the beginning date of the spouse annuity.

(b) If tier I of a spouse annuity is reduced for the spouse's employee annuity, as provided for in § 226.30(g) of this part, the reduction is restored in tier II. The restored amount is payable on the effective date of the spouse or the employee tier I benefit, whichever is later. The previous tier II rate is increased by the restored amount, which is determined as follows:

(1) *Initial restored amount.* The restored amount is the amount by which the spouse tier I was reduced by reason of receipt of an employee annuity on the date the restored amount is first payable. The restored amount is only payable if either the employee or spouse had railroad service prior to 1975.

(2) *Recomputation of restored amount.* The restored amount is recomputed if the spouse becomes entitled to a government pension, a social security benefit, or a different type of social security benefit after the date the initial restored amount is effective. The recomputed amount is the amount by which the spouse tier I is reduced by reason of receipt of an employee annuity on the effective date of the entitlement to a government pension or social security benefit.

(3) *Cost-of-living increase in restored amount.* If an initial or recomputed restored amount is effective before the effective date of the cost-of-living increase shown in paragraph (e) of this section, the restored amount is multiplied by the percentage increase that applies. The result is added to the restored amount on the effective date of the increase for each year that the increase is payable.

(c) If the employee's tier II has been reduced pursuant to section 3(g)(2) of the Railroad Retirement Act (takeback provision) the spouse tier II is reduced by one half of the ''takeback'' in the employee tier II.

(d) If the railroad retirement family maximum applies, as shown in §§ 226.50–226.52 of this part, the spouse tier II rate, as determined in paragraphs (a) through (c) of this section, is reduced by the smaller of—

(1) The total railroad retirement maximum reduction amount; or

(2) The previous spouse tier II rate.

(e) The tier II rate, from paragraphs (a) through (d) of this section, is increased by the same percentage as the employee tier II increase described in § 226.11(e) of this part.

(f) If the spouse is entitled to a reduced age annuity (see § 216.51 of this chapter), the tier II rate, as determined in paragraphs (a) through (e) of this section is reduced in the same manner as the tier I as provided for in § 226.30(e) of this part.

Example: An employee's tier II rate is $329.63 effective October 17, 1981. The spouse rate is $148.33 (45 percent × $329.63) effective October 17, 1981. This is increased to $151.89 effective June 1, 1982, by a cost-of-living increase of 2.4 percent. The spouse is 35 months under age 65, the present retirement age, when the annuity begins. The $151.89 rate is multiplied by 35/144 to produce an age reduction of $36.92. This is

subtracted from $151.89 to produce a final rate of $114.97.

§ 226.33 Spouse regular annuity rate.

The final tier I and tier II rates, from §§ 226.30 and 226.32, are added together to obtain the total spouse regular annuity rate.

§ 226.34 Divorced spouse regular annuity rate.

The regular annuity rate of a divorced spouse is equal to his or her tier I amount. The divorced spouse is not entitled to a tier II benefit.

§ 226.35 Deductions from regular annuity rate.

The regular annuity rate of the spouse and divorced spouse annuity may be reduced by premiums required for supplemental medicare coverage, income tax withholding (spouse annuity only), recovery of debts due the Federal government, and garnishment pursuant to part 350 of this chapter.

Subpart D—Railroad Retirement Family Maximum

§ 226.50 General.

There is a monthly ceiling on total family benefits which limits the amount of certain portions of the employee and spouse annuity. This railroad retirement family maximum amount varies according to the employee's earnings in the ten-year period that ends with the year in which his or her annuity begins. If the employee and spouse annuity amounts described in § 226.52 of this part are higher than the maximum from § 226.51 of this part, first the spouse tier II, then the supplemental annuity and, finally, the employee tier II are reduced until the total annuity amount is equal to the maximum or until the spouse tier II and the employee supplemental annuity and tier II have been reduced to zero, whichever comes first. The reduction for the railroad retirement family maximum is first computed from the date the employee's annuity begins. It is recomputed if the employee's tier II rate is reduced for entitlement to a vested dual benefit. It is also recomputed if a workers' compensation or other disability benefit begins or ends, or the employee's tier I benefit or supplemental annuity begins after the beginning date of the regular employee annuity. Finally, it is recomputed if a spouse who was entitled to an annuity divorces the employee or the spouse annuity entitlement ends.

§ 226.51 Maximum monthly amount.

The railroad retirement family maximum is equal to an employee's ''final average monthly compensation'' (FAMC) up to ½ of 1/12 of the annual maximum tier I earnings as shown in part 224 of this chapter in the year the annuity begins plus 80 percent of so much of his or her FAMC as exceeds ½ of 1/12 of the tier I maximum in the year the annuity begins. For this purpose, the FAMC is determined by dividing the individual's total earnings up to the tier II earnings limit as shown in part 211 of this chapter for the two highest-earnings years out of the last 10 calendar years, including the year of retirement, by 24. The railroad retirement maximum cannot be more than the FAMC and cannot be less than $1,200.

Example: An employee's annuity begins on December 2, 1982. He has yearly earnings that exceed the tier II annual maximum of $24,300 in 1982 and $22,200 in 1981. The FAMC is the sum of the tier II maximum for 1981 and 1982 divided by 24 ($24,300 + $22,200÷24) or $1,937.50. The maximum which may be credited to a month for tier I in 1982 is $2,700. The family maximum is $1,350 (½ of 1/12 of the annual tier I maximum) plus $470 (80% of the difference between $1,937.50 and $1,350) or $1,820.

§ 226.52 Total annuity subject to maximum.

The total annuity amount which is compared to the maximum monthly amount to determine if a reduction for the railroad retirement family maximum applies is determined by adding together the amounts in paragraphs (a) and (b) of this section. A hypothetical spouse annuity amount is included from the beginning date of the employee annuity if the spouse is not entitled to an annuity at the time the maximum calculation is made.

(a) *Employee annuity amounts*. The following amounts are added together—

(1) The employee tier I amount, effective on the date the employee's tier I benefit begins or, if later, on the date a reduction for other disability benefits begins or ends, as shown in § 226.71 of this part. This amount is before any reduction for age or social security benefits but after including any delayed retirement credits, after any reduction for other disability benefits, and after rounding; and

(2) The employee tier II rate before reduction for the railroad retirement family maximum, effective on the employee's annuity beginning date and, if later, on the date the tier II is first reduced for a vested dual benefit, as shown in § 226.11 of this part; and

(3) The initial supplemental annuity rate effective on the date the supplemental annuity begins, before any reduction for a private pension, as shown in part 227 of this chapter.

(b) *Spouse annuity amounts*. The following amounts are added together—

(1) The spouse tier I amount, which is or would be effective on the date the employee's annuity or tier I benefit begins, as shown in § 226.30. This amount is before any reduction for other disability benefits, age, or social security benefits, but after any reduction for a government pension or employee annuity; and

(2) The spouse tier II rate which is or would be effective on the employee's annuity beginning date, the date the employee's tier I benefit begins, or the date the employee's tier II rate is reduced for a vested dual benefit, as shown in § 226.11. This rate includes the restored amount but does not include any cost-of-living increase in the tier II original rate or restored amount. It is the rate before reduction for the railroad retirement family maximum or age minus any cost-of-living increases.

Subpart E—Years of Service and Average Monthly Compensation

§ 226.60 General.

The years of service and average monthly compensation used in computing an employee's tier II annuity rate are based on the employee's creditable railroad service and compensation as described in parts 210 and 211 of this chapter. In computing the average monthly compensation, the compensation for each year cannot be higher than twelve times the tier II monthly maximum creditable for that year, as described in part 211 of this chapter.

§ 226.61 Use of military service.

(a) *Claim for use of military service*. An employee is deemed to have filed a claim for the use of military service and earnings as service and compensation under the Railroad Retirement Act if—

(1) The employee indicates on the annuity application or another signed statement that he or she has military service;

(2) The employee does not specifically request that the military service be credited as wages under the Social Security Act;

(3) The military service is creditable under the Railroad Retirement Act, as shown in part 212 of this chapter; and

(4) Using the military service as railroad service and compensation would be to the employee's advantage (the employee and his or her family would receive higher total benefits than if the military service were credited under the Social Security Act).

(b) *Effective date for use of military service*. Military service can be used as service and compensation under the

Railroad Retirement Act starting with the date the annuity begins but no earlier than twelve months before the employee files an application or statement showing that he or she has military service.

§ 226.62 Computing average monthly compensation.

The employee's average monthly compensation is computed by first determining the employee's highest 60 months of railroad compensation (disregarding compensation in excess of the maximum creditable tier II compensation for that year). The total of the highest 60 months is then divided by 60 to determine the average monthly compensation.

§ 226.63 Determining monthly compensation.

(a) *Based on yearly compensation.* If Board records do not show monthly compensation for a year, the monthly compensation is determined by dividing the total compensation reported for the year by the number of months of service credited to the employee for that year.

(b) *For employee with government employment and no railroad service for 60-month period before annuity begins*—(1) *General.* The compensation used in determining the average monthly compensation (AMC) is indexed for an employee who has not worked in the railroad industry for the 60-month period before the month the employee's annuity begins and whose major employment during that period was for a government agency listed in § 216.16 of this chapter. The compensation is indexed by multiplying it by the quotient obtained by dividing the average annual wage for the indexing year by the average annual wage for the year being indexed. If the month for which compensation is being indexed is before 1951, the average annual wage for 1951 is used.

(2) *Indexing year defined.* The indexing year is the second year before the year in which the annuity begins.

Subpart F—Reduction for Workers' Compensation and Disability Benefits Under a Federal, State or Local Law or Plan

§ 226.70 General.

For any month an employee disability annuitant is entitled to workers' compensation or a public disability benefit, the tier I benefit of the spouse or divorced spouse is reduced due to receipt of such benefits. (If both spouse and divorced spouse annuities are payable, the reduction amount is divided and applied in equal amounts to both the spouse and divorced spouse tier I benefits.) The employee tier I is reduced by the difference between the total reduction amount, described in § 226.71 of this part, and the reduction in the spouse and divorced spouse tier I benefits.

§ 226.71 Initial reduction.

(a) *When reduction is effective.* A reduction for other disability benefits begins with the first month the employee is receiving both a disability annuity and workers' compensation or a public disability benefit. The reduction ends with the month before the month in which the employee becomes 65 years old or with the month in which the workers compensation or public disability benefit ends.

(b) *Amount of reduction.* The reduction for other disability benefits equals the difference between—

(1) The total tier I rates of the employee, spouse, and divorced spouse, before any reductions (age, public pension, social security benefits, etc.) plus the monthly amount of the workers' compensation of public disability benefit; and

(2) The higher of—

(i) Eighty percent of the employee's average current earnings, as defined in this section; or

(ii) The total tier I rates, as described in paragraph (b)(1) of this section.

Example 1: Harold is entitled to a monthly disability annuity with a tier I component of $507 and a monthly public disability benefit of $410 from the state. Eighty percent of Harold's average current earnings is $800. Because this amount is higher than Harold's tier I component, to determine the reduction for other disability benefits the Board subtracts this amount ($800) from the total of Harold's tier I component ($507) and public disability benefit ($410) which results in a reduction amount of $117 ($917–$800). This leaves Harold with a reduced tier I amount of $390 ($507–$117).

Example 2: Tom is entitled to a disability annuity with a tier I component of $560. His wife and divorced wife are both entitled to annuities with tier I components of $280 each. Total benefits are $1,120. Tom is receiving a monthly workers' compensation benefit of $500 from the state. Eighty percent of Tom's average current earnings is $820. Because the total benefit ($1,120) is higher than Tom's average current earnings, to determine the reduction for other disability benefits the Board subtracts this amount from $1,620 ($1,120 plus $500) which results in a reduction amount of $500. This means that the tier I of the spouse and divorced spouse annuity are each reduced by $250.

(c) *Average current earnings, defined.* An employee's ''average current earnings'' is the highest of—

(1) The average monthly wage (AMW) used to compute the tier I AMW PIA. (The earnings are not indexed, even if the tier I PIA which is being paid is based on average indexed monthly earnings. See part 225 of this chapter.); or

(2) One-sixtieth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the five consecutive years after 1950 in which the employee had the highest earnings. The result, if not a multiple of $1, is rounded to the next lower multiple of $1; or

(3) One-twelfth of the employee's total earnings covered under either the Social Security or Railroad Retirement Acts (including earnings that exceed the maximum earnings used in computing social security benefits) for the year of highest earnings in the period which includes the year in which the employee became disabled and the five preceding years. The result, if not a multiple of $1, is rounded to the next lower multiple of $1.

§ 226.72 Benefits that do not cause a reduction.

The tier I is not reduced for the following types of benefits:

(a) A benefit paid under a law or plan that provided, on February 18, 1981, for reducing the benefit for entitlement to a disability insurance benefit under the Social Security Act.

(b) A Federal disability benefit based on service for other than a state or local government, if all or part of that service is covered under the Social Security Act.

(c) A disability benefit paid by the Federal government or a state or local government based on state or local employment, if all or substantially all of that employment is covered under the Social Security Act. ''Substantially all'' means 85 percent or more of the employment.

(d) A benefit paid by the Veteran's Administration.

(e) Private disability benefits.

(f) Amounts paid under the Federal Employers' Liability Act (FELA).

(g) Benefits based on need, such as welfare benefits or supplemental security income.

§ 226.73 Changes in reduction amount.

The reduction amount is not changed when a tier I benefit increases because of a recomputation or a general adjustment in annuity rates, such as a cost-of-living increase. However, the reduction amount may change for the following reasons:

(a) *A spouse or divorced spouse becomes entitled to a tier I benefit after*

the effective date of the reduction. The reduction amount is recomputed as if the spouse or divorced spouse were entitled to a tier I benefit on the date the reduction first applied. The new reduction amount applies beginning with the date the spouse or divorced spouse tier I benefit begins.

Example: An employee became entitled to an annuity with a tier I component of $500 on May 1, 1991. He was also receiving a state disability benefit of $300 a month based on employment not covered under the Social Security Act. On June 1, 1991, the employee's tier I increased to $520.70. On October 1, 1991, the employee's wife becomes entitled to an annuity with a tier I benefit of $260.00. The tier I amount ($250) that would have been payable to the wife on May 1, 1991 (assuming she had been eligible for a benefit at that time) is used to determine the reduction for other disability benefits beginning October 1, 1991.

(b) *The tier I benefit of a spouse or divorced spouse annuity ends after the effective date of the reduction.* The new reduction amount is computed using the tier I rate to which the employee was entitled when the reduction first applied. The new reduction amount applies beginning with the month after the month in which the spouse or divorced spouse tier I benefit ends.

(c) The average current earnings are redetermined, as shown in § 226.74.

(d) *The amount of the other disability benefit changes.* The reduction amount is recomputed to use the new benefit rate beginning with the date on which the new rate is payable. Any increases in the tier I amounts which were effective after the reduction first applied are not included in computing the new reduction amount.

Example: The employee's tier I benefit is $500 on May 1, 1991, when the annuity is first reduced for other disability benefits. The tier I increases to $520 effective June 1, 1991. When the amount of the disability benefit changes on October 1, 1991, $500, not $520, is used as the employee tier I amount in recomputing the reduction amount.

§ 226.74 Redetermination of reduction.

(a) *General.* The average current earnings are redetermined in the second year after the year the reduction for other disability benefits was first applied and every third year after that. The redetermined amount is used only if it results in a lower reduction amount. The new reduction amount is effective with January of the year after the redetermination is made.

(b) *Redetermined average current earnings.* The average current earnings are redetermined by multiplying the initial average current earnings amount by—

(1) The average of the total wages (including wages that exceed the maximum used in computing social security benefits) of all persons for whom wages were reported to the Secretary of the Treasury for the year before the year of redetermination, divided by the average of the total wages reported to the Secretary of the Treasury for 1977 or, if later, the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1; or

(2) If the reduction was first computed before 1978, the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of 1977, divided by the average of all taxable wages reported to the Secretary of Health and Human Services for the first quarter of the year before the year for which the reduction was first computed. If the result is not a multiple of $1, it is rounded to the next lower multiple of $1.

Subpart G—Recomputation To Include Additional Railroad Service and Compensation

§ 226.90 When recomputation applies.

An employee's annuity may be recomputed to include additional railroad service and compensation and social security wages which the employee earns after the beginning date of the employee annuity. The annuity is recomputed only if the recomputation increases the annuity rate by more than $1 a month or results in a lump-sum payment of more than $5. Before a recomputed rate can be paid, the employee must stop working in the railroad industry. A recomputed tier I component is payable beginning with January 1 of the year after the year in which the wages or compensation are earned or (provided the employee is age 62 or disabled), in the case of railroad compensation, in the year after the employee stops working in the railroad industry. A recomputed tier II component is payable from the date the annuity is reinstated after the employee has ceased railroad work.

§ 226.91 How an employee annuity rate is recomputed.

(a) *Tier I.* A recomputation is made if any social security wages or railroad compensation for a year in which the employee returned to work are higher than the earnings for a year included in the previous computation of the tier I PIA, as shown in part 225 of this chapter. The higher earnings are used instead of the lower earnings for the earlier year to determine the average monthly wage or average indexed monthly earnings. Part 225 of this chapter describes how a PIA is recomputed.

(b) *Tier II.* The additional service is added to the years of service previously used in computing the tier II rate. The additional compensation is used to recompute the average monthly compensation, if the compensation for a month in which the employee returned to railroad service is higher than the compensation for a month used in the previous computation of the average monthly compensation. The higher monthly compensation is used instead of the lower compensation for a previous month to determine the new average monthly compensation as shown in § 226.62 of this part. The increased years of service and average monthly compensation are used in computing a new tier II rate, as shown in § 226.11 of this part.

Example: An employee receiving an annuity which began on January 1, 1992, returns to railroad service for 10 months in 1992 and 2 months in 1993. He stops work on February 20, 1993. He has earnings of $34,500.00 in 1992 and $5,200.00 in 1993. His tier II rate effective January 1, 1992, was based on 26 years (312 months) of service and an average monthly compensation of $2,995 ($179,700÷60). The additional 12 months of service increases the year of service used in computing the tier II rate to 27 (312 months + 12 months = 324 months ÷ 12 = 27). The 1992 earnings of $34,500.00 are used instead of 1987 earnings of $32,700.00. The 1993 earnings are not used because they are lower than the earnings for previous months used in computing the average monthly compensation. The additional $1,800.00 in earnings increases the average monthly compensation to $3,025 ($179,100 + $1,800.00 = $181,500.00÷60). The initial tier II amount is increased from $545.09 (26×$2,995×.007) to $571.73 (27×$3,025×.007), effective with the date of annuity reinstatement, March 1, 1993.

§ 226.92 Effect of recomputation on spouse and divorced spouse annuity.

The annuity of a spouse or divorced spouse is recomputed to use the employee's recomputed tier I PIA and tier II rate, if the recomputation results in a lump-sum payment of more than $5 or an increase in the spouse or divorced spouse annuity rate of more than $1 a month. The spouse or divorced spouse annuity rate is recomputed beginning with the same date the employee's annuity rate is recomputed.

PART 232—SPOUSES' ANNUITIES—[REMOVED]

2. For the reasons set out in the preamble, Part 232—Spouses' Annuities, is removed.

Dated: April 28, 1995.

By authority of the Board.
For the Board,

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 95–11142 Filed 5–4–95; 8:45 am]

BILLING CODE 7905–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0440]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2,2′-methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate as an antioxidant in acrylonitrile-butadiene-styrene copolymers intended for use in contact with food. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective May 5, 1995; written objections and requests for a hearing by June 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 3, 1995 (60 FR 129), FDA announced that a food additive petition (FAP 5B4443) had been filed by Sumitomo Chemical America, Inc., 345 Park Ave., New York, NY 10154. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2,2′-methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate as an antioxidant in acrylonitrile-butadiene-styrene copolymers complying with § 177.1020 (21 CFR 177.1020) intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before June 5, 1995, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.2010 is amended in the table in paragraph (b) for the entry ''2,2′-methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate'' by adding a new entry ''4.'' under the heading ''Limitations'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * *	
2,2′-Methylenebis(4-methyl-6-*tert*-butylphenol)monoacrylate (CAS Reg. No. 61167–58–6).	For use only:
	* * * * *
	4. At levels not to exceed 0.5 percent by weight of acrylonitrile-butadiene-styrene copolymers that comply with § 177.1020 of this chapter when used in articles that contact food only under conditions of use E, F, and G as described in Table 2, § 176.170 (c) of this chapter.
* * * * *	

Dated: April 24, 1995.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–11060 Filed 5–4–95; 8:45 am]

BILLING CODE 4160–01–F

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 100

Administrative Regulations

AGENCY: National Labor Relations Board (NLRB).

ACTION: Correction.

SUMMARY: On July 21, 1994, the National Labor Relations Board amended its administrative regulations (59 FR 31757) governing the standards of conduct and financial disclosure requirement of its employees of the Agency. Most of those regulations had been superseded by the Standards of Ethical Conduct for Employees of the Executive Branch issued by the Office of Government (OGE). The NLRB published the rule to repeal those portions of the provisions that were superseded by the executive branch-wide standards and to update cross-references in the current regulations that continued to be applicable. The NLRB is publishing this rule to correct amendatory instructions 4. and 5. and amendatory instruction 10. (59 FR 37158) of that amending rule.

EFFECTIVE DATE: The removal of § 100.106, the removal of § 100.201 of Subpart B, and the redesignation of § 100.123 as the new § 100.201 of Subpart B are effective July 21, 1994.

FOR MORE INFORMATION CONTACT:

Gloria Joseph, Director of Administration, National Labor Relations Board, Room 7109, 1099 14th Street NW., Washington, DC 20570–0001. (202–273–3890).

List of Subjects in 29 CFR Part 100

Administrative Regulations, Government employees, cooperation in audits and investigations, employee personal property loss claims, claims under the Federal Tort Claims Act, nondiscrimination on the basis of handicap in NLRB programs.

PART 100—[CORRECTED]

§ 100.103 through 100.106 [Removed]

1. On page 37158, in the third column, amendatory instructions 4. and 5. should read as follows:

4. and 5. Sections 100.103 through 100.106 are removed.

Subpart B—Cooperation in Audits and Investigations

2. On page 37158, in the third column, amendatory instruction 10. should read as follows:

10. § 100.201 of Subpart B is removed and § 100.123 is redesignated as the new § 100.201 of Supbart B and revised to read as follows:

Dated: Washington, DC, May 1, 1995.

By direction of the Board.

National Labor Relations Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 95–11078 Filed 5–4–95; 8:45 am]

BILLING CODE 7545–01–M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule implements provisions of Public Laws 103–123 and 103–329 that further restrict the kinds of advertisements and products that are mailable at the special bulk third-class rates by authorized organizations.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On October 28, 1993, the President signed into law Public Law 103–123, the Treasury, Postal Service, and General Government Appropriations Act for 1994. Title VII of the Act, the Revenue Forgone Reform Act, amended 39 U.S.C. 3626 by adding provisions to subsection (j) as well as new subsection (m) (1993 amendments). These sections add further restrictions on the use of special bulk third-class postage rates by qualified organizations.

On September 30, 1994, the President signed into law Public Law 103–329, the Treasury, Postal Service, and General Government Appropriations Act for 1995 (1994 amendment), amending provisions of Public Law 103–123. The amendment creates an exception to the 1993 amendments for advertisements printed in materials that meet the content requirements for periodical publications as prescribed by the Postal Service.

The Postal Service published in the **Federal Register** (60 FR 12490–12492) on March 7, 1995, a proposal to amend the Domestic Mail Manual (DMM) to implement certain provisions of Public Laws 103–123 and 103–329. These provisions made certain types of matter ineligible to be mailed at the special bulk third-class postage rates, which are available for use by certain nonprofit organizations, political committees, and voting registration officials. The Postal Service requested comments by April 6, 1995.

The 1993 amendments established new content-based restrictions on matter eligible for special bulk third-class rates. In order for material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of any product or service (other than insurance, travel, or financial instruments, which were the subject of restrictions in previous legislation and rulemaking) to qualify for mailing at the special bulk third-class rates, the sale of the product or the providing of the service must be substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates. The determination of whether a product or service is substantially related to an organization's purpose is to be made in accordance with standards established under the Internal Revenue Code. The amendments also added restrictions on the mailing of products at the special bulk third-class rates.

The 1994 amendment provides that advertisements mailed at the special bulk third-class rates need not meet the substantially related test if the material of which the advertisement is a part meets the content requirements for a periodical publication, as specified by the Postal Service. The 1994 amendment does not affect the restrictions on the mailing of products established in the 1993 amendments.

The only products mailable at the special bulk third-class rates are low-cost products as defined under the Internal Revenue Code, items donated or contributed to the qualified organization, and periodical publications of authorized organizations. The Postal Service views the new provisions as supplementary to, rather than a change to or replacement for, existing restrictions on special-rate mailings. That is, mailings ineligible for the special rates under existing rules remain ineligible for these rates, regardless of whether they violate the new restrictions. Further, mailings that violate the new restrictions would not be eligible for the special rates, regardless of whether they would be eligible under existing rules.

As the Postal Service has pointed out in prior rulemakings, it should be recognized that the Postal Service has limited discretion on what may be mailed at the special rates. These historically subsidized rates are based on statutes that prescribe standards for who may mail at the special rates and what may be sent at those rates. The Postal Service views its role as the administrator of these laws. Accordingly, its goal in this rulemaking

is to promulgate rules implementing Public Laws 103–123 and 103–329.

A final rule was published in the **Federal Register** (59 FR 23158–23164) on May 5, 1994, to implement provisions of Public Law 103–123, with an effective date of September 4, 1994. That final rule was subsequently indefinitely delayed by notice in the **Federal Register** (59 FR 39967) on August 5, 1994. This final rule adopted in this notice carries forth most of the same rules that were to have been effective September 4, 1994, while implementing the new exception for advertisements provided by Public Law 103–329. The exception specifies that advertisements in material that meets the content requirements for a periodical publication, as specified by the Postal Service, need not be substantially related to the purpose(s) of the authorized organization to qualify for mailing at the special bulk third-class rates.

As explained below, the new rules deny the use of special bulk third-class rates for mailpieces that do not meet the content requirements for a periodical publication as prescribed by the Postal Service and contain one or more advertisements for products or services that are not ''substantially related'' to a purpose on which the organization's authorization to mail at the special bulk third-class rates is based. This prohibition applies regardless of the inclusion of other advertisements that do qualify for mailing at those rates. Products and services advertised in mailpieces that meet the content requirements for a periodical publication need not be substantially related to a purpose of the authorized organization to be mailable at the special bulk third-class rates. These new rules are in addition to, and are designed to be compatible with, existing prohibitions on the use of special bulk third-class rates for improper cooperative mailings and for certain advertising of financial instruments, insurance policies, and travel arrangements. Restrictions on advertisements for the last three types of products or services are not subject to the exceptions adopted in this rulemaking.

Material that is not considered to be advertising is not prohibited under these restrictions. This material includes certain acknowledgments and ''permissible references'' described in current DMM E370.5.6 (which will be renumbered as DMM E370.5.7). It also includes public service announcements that are not considered to be advertising under postal standards. This policy is set forth in DMM E211.11.2. The determination of whether other material comes within the restrictions in new DMM E370.5.4(d) must be made on a case-by-case basis. For example, the Postal Service has received inquiries concerning material containing prize offers. If the reader is not required to make a purchase in order to be eligible for a prize, the material is not considered to be an advertisement or otherwise subject to DMM E370.5.4(d). The Postal Service understands that sweepstakes announcements usually include such arrangements. When an individual is eligible for a prize or premium only if a purchase is made, the matter would generally be considered under the provisions of DMM E370.5.4(d).

Evaluation of Comments Received

Written comments were received from six associations and organizations. One favorable comment recommended adoption of the proposed rule in its entirety. Three other comments generally favored adoption of the proposed rules, with specific objections to only one subsection. Two comments expressed broader concerns with the proposal. After considering all six comments, the Postal Service has determined to adopt the rule as proposed except for minor changes described below.

Although two comments did not object to the four general content requirements for a periodical publication in proposed DMM E370.5.8 (i.e., title, printed sheets, identification statement, and nonadvertising content) or to the remainder of the proposed rules, they opposed the requirement for a frequency statement in the identification statement. The comments stated that this additional rule creates a frequency requirement whereas the restrictions adopted by Congress call for eligibility to be based on the content requirements for periodical publications, not periodicity or other requirements. The comments pointed out that it is important to recognize the financial and staffing resource constraints under which many nonprofit organizations operate. They stated that it is not uncommon for an organization's mailing to be prepared, printed, and presented to the Postal Service for delivery after a volunteer has found the time to write the material, or after the next grant or donation has been received to fund its production, or both. As an alternative to eliminating the requirement for a frequency statement in the third-class publication's identification statement, one of the comments suggested that mailers be allowed to state the frequency as ''irregular.''

The Postal Service agrees with the statements of these two comments that the exception created in the 1994 legislation does not establish a frequency requirement for matter meeting the content requirements for a periodical publication. The Postal Service proposal is based on the need to implement a statute that requires a listing of the content requirements for periodicals. Identification statements are required to be printed in second-class periodicals, and frequency statements are in the identification statements. However, unlike second-class publications, publications eligible for mailing at the special bulk third-class rates are not required to be issued according to a regular frequency or to have a minimum number of issues produced each year. The rule simply requires mailers to provide a description of the publication frequency in the identification statement. If the term ''irregular,'' or a similar term, best describes the intended frequency, then that description satisfies DMM E370.5.8. As a further note, if the frequency changes, the new frequency should be included in the identification statement when the publication is again published; no separate notice need be provided to the Postal Service. Further, the Postal Service will not monitor the publication to ensure that the stated frequency is met and will not impose sanctions if it is not followed, as might occur if a frequency requirement were imposed. Accordingly, in view of the comments received, the Postal Service has added ''irregularly'' as an example of a statement of frequency in DMM 5.8c(3). It has also changed the requirement in that subsection from ''Statement of frequency showing how many issues are to be published each year and at what regular intervals (daily; weekly; monthly except June; four times a year in June, August, September, and December; annually; etc.)'' to ''Statement of frequency showing when issues are to be published (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; irregularly, etc.)'' to eliminate confusion as to what constitutes an acceptable statement of frequency.

Two comments reminded the Postal Service of its commitment to publish and distribute a detailed handbook to be made available to interested mailers, and these comments asked that this handbook include explanations concerning specific types of mailings, particularly if such explanations could not be added directly to the DMM. As

previously announced, the Postal Service plans to publish a handbook that will contain information regarding special bulk third-class mailings. The handbook will combine current Publications 417 and 417–A and will contain information regarding application procedures, qualifying organizations, mailing at other post offices, and cooperative mailings, as well as material concerning the new content-based restrictions (advertisements, products, premiums, sweepstakes, etc.). Although the handbook will contain helpful information to assist authorized organizations to determine whether their materials qualify for mailing at the special bulk third-class rates, the Domestic Mail Manual will contain the rules governing the kinds of materials that qualify for mailing at these rates. The handbook will provide information and examples that will be helpful in applying the rules in the Domestic Mail Manual. Plans are to distribute the handbook as far in advance as possible of the effective date of this final rule. A notice will be published in the Postal Bulletin when the handbook is available for distribution.

One comment stated that requester publications should be allowed to qualify for special second-class rates. The comment also suggested that the Postal Service explore with interested parties the adoption of rules to accomplish this goal. This comment is beyond the scope of this rulemaking.

One comment stated that the proposed rule neither distinguishes between premiums and products nor between advertising and solicitations for donations. This comment argues that solicitations by nonprofit organizations that seek donations and offer premiums to contributors should not be considered advertising. The provision questioned by the comment was among the provisions originally adopted on May 5, 1994, and is carried forward in the rules adopted with this final rule. The Postal Service specifically addressed the issue raised by this comment, which concerns ''back-end premiums'' in that earlier rulemaking, 59 FR 23162, and the Postal Service continues to believe that the conclusions reached at that time are sound. The definition for advertising as set forth in DMM E211.11.0 states that the term includes all material for the publication of which a valuable consideration is paid, accepted, or promised that calls attention to something to get people to buy it, sell it, seek it, or support it. The Postal Service, therefore, believes that a mailpiece containing information promising to furnish a product or premium in return for making a donation is an advertisement for the product or premium. Consequently, the advertisement must comply with one of the applicable exceptions in order to be eligible for the special rates, i.e., be substantially related to the purposes of the authorized organization (which includes advertisements for items received by the authorized organization as a donation or gift), or be in material that meets the content requirements for a periodical publication. The Postal Service further notes that the question of whether the back-end premium itself may be mailable at the special rates is subject to a different set of rules: the product restrictions set forth in DMM E370.5.10. Additionally, it should not be forgotten that the new restrictions on advertising affect only material considered to be advertisements. Accordingly, a mailpiece of an authorized organization that contains only a donation solicitation for that organization will not be considered an advertisement subject to the new restrictions.

The same comment noted its agreement with statements in the Supplementary Information portion of the proposed rules concerning treatment of sweepstakes and public service announcements (PSAs), and urged that these be incorporated into the rules. Postal policy concerning PSAs is contained in DMM E211.11.0 (see 60 FR 10021, 10029, February 23, 1995). The treatment of sweepstakes mailings is an application of the general rules published in this notice. These are necessarily ''regulations of a general character,'' *United States Postal Service* v. *Council of Greenburgh Civic Associations*, 453 U.S. 114, 133 (1981). It is impractical for the Postal Service to anticipate and address specific examples of mailings in these rules. Nevertheless, detailed information about products, premiums, donation solicitations, and advertisements will be addressed in the upcoming handbook to assist customers in determining whether these materials are mailable at the special bulk third-class rates.

One comment stated that the proposed rules ''create a pseudo-periodical publication category in third-class.'' It stated that periodical publications are defined in DMM E200; that clear and precise content requirements are listed in DMM E212.1.3, E212.3.1, and E212.4.1; that Congress intended that the provisions of DMM E212.1.3a, 1.3c, and 1.3d serve as the content restrictions affecting special bulk third-class mail containing space advertising; and that the law does not require that a special bulk third-class mailpiece be a periodical publication.

The Postal Service believes that it is in agreement with the comment on two essential points: (1) That the statutory exception is not limited to periodicals, but to materials that meet the content requirements for periodicals; and (2) that the test for the Postal Service is to adopt regulations to implement the statutory language established by Congress. If the statute requires the creation of a ''pseudo-periodical'' category, that matter is beyond the authority of the Postal Service, whose role is limited to the implementation of the statute. Although the comment stated a belief that DMM E212.2.3, E212.3.1, and E212.4.1 create content requirements, it did not urge that they be included in the final rule. Instead, the comment indicated a belief that Congress intended DMM E212.1.3a, 1.3c, and 1.3d to serve as the restrictions, although it did not cite any direct evidence of such congressional intent. These rules establish advertising restrictions only for second-class eligibility purposes. The proposed rule contains an advertising restriction in DMM E370.5.8d. The proposed rule also establishes other criteria such as the need for a title, printed sheets, and an identification statement. Because these are all items that must be contained in the mailpiece, the Postal Service believes, contrary to the assertions of this comment, that these criteria are fairly described as content requirements for periodical publications. The Postal Service believes that proposed DMM E370.5.8 contained reasonable, objective criteria to implement a statute requiring a listing of the content requirements for periodicals and, therefore, adopts the proposed rule.

One comment stated that the proposed rule would allow organizations to use special bulk third-class postal rates to compete unfairly with for-profit organizations. This comment generally appears to be opposed to the use of special bulk third-class rates for advertising matter and asserts that authorized organizations' mailings should be restricted to nonadvertising and non-income-generating endeavors. The comment also urged, apparently as an alternative position, that the rules be reviewed to create stricter limits against the mailing of advertisements at the special rates.

The comment that authorized organizations should be restricted to nonadvertising and non-income-generating endeavors goes beyond the scope of the statutes and the authority of the Postal Service. The kinds of organizations that may mail at the

special bulk third-class rates and what they may mail at those rates are established by statute. Although these laws set forth restrictions against the entry of advertisements at the special rates, they also provide exceptions to the restrictions. The Postal Service is not permitted to change provisions of the statutes by rulemaking as urged by the comment. The same comment also asked that the rules be revised to limit advertisements mailed at the special bulk third-class rates to those advertisements that are substantially related to the exercise or performance by the organization of one or more of the purposes constituting the basis for the organization's authorization to mail at such rates, which it describes as the ''current rule.'' In fact, this provision was part of the final rule published on May 4, 1994, to implement the 1993 amendments. As described above, this provision was subsequently indefinitely delayed, but it is adopted as part of this final rule. The comment essentially requested the Postal Service to ignore the additional exception created in the 1994 amendments. This would be beyond the authority of the Postal Service for reasons explained above. The same comment also argued that the proposed rule creates an overly broad definition of periodical publication in DMM E370.5.8; the comment would limit the new exception to ''legitimate nonprofit publications'' and change proposed DMM E370.5.8d to require the publication to contain at least 75% nonadvertising matter. The exception in the 1994 amendments is not limited to ''periodicals''; it refers to material meeting the content requirement for periodical publications. Moreover, the proposed 75% threshold is inconsistent with existing content requirements.

In addition to the changes to the proposed rule described above, the following additional minor changes have been made in the final rule. The phrase ''qualified organization,'' which describes organizations authorized to mail at the special bulk third-class rates, has been changed to ''an authorized organization'' in DMM 5.6c and 5.6d. DMM 5.6b(3) has been revised to clarify that the exception in the 1994 amendment applies to material that meets the content requirements for periodicals rather than solely to ''publications.'' Finally, the requirement for inclusion of a USPS number in DMM 5.8c(6) has been eliminated since such a number would ordinarily appear only in matter entered as second-class mail.

List of Subjects in 39 CFR Part 111

Postal Service.

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

PART 111—[AMENDED]

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

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

2. In the Domestic Mail Manual, renumber sections E370.5.6, 5.7, 5.8, and 5.9 as E370.5.7, 5.9, 5.12, and 5.11, respectively; add new E370.5.4(d), 5.6, 5.8, and 5.10 as follows:

E—Eligibility

* * * * *

E370 Special (Nonprofit) Bulk Rates

* * * * *

5.0 ELIGIBLE AND INELIGIBLE MATTER

* * * * *

5.4 Prohibitions

Special bulk third-class rates may not be used for the entry of material that advertises, promotes, offers, or, for a fee or consideration, recommends, describes, or announces the availability of:

* * * * *

[Add new 5.4d as follows:]

d. Any other product or service unless one of the following exceptions is met:

(1) The sale of the product or the providing of such service is substantially related to the exercise or performance by the organization of one or more of the purposes used by the organization to qualify for mailing at the special bulk third-class rates. The criteria in 5.6 are used to determine whether an advertisement, promotion, or offer for a product or service is for a substantially related product or service and, therefore, mailable at the special bulk third-class rates.

(2) The product or service is advertised in third-class material meeting the prescribed content requirements for a periodical publication. The criteria in 5.8 are used to determine whether the third-class material meets the content requirements for a periodical publication.

[Change title of 5.5 as follows:]

5.5 Definitions, Insurance

* * * * *

[Add new 5.6, renumber existing 5.6 as 5.7, and renumber existing 5.7 as 5.9.]

5.6 Definitions, Substantially Related Advertising, Products

For the standards in 5.4d:

a. To be substantially related, the sale of the product or the providing of the service must contribute importantly to the accomplishment of one or more of the qualifying purposes of the organization. This means that the sale of the product or providing of the service must be directly related to accomplishing one or more of the purposes on which the organization's authorization to mail at the special bulk third-class rates is based. The sale of the product or providing of the service must have a causal relationship to the achievement of the exempt purposes (other than through the production of income) of the authorized organization. (The fact that income is produced from selling an advertised product or providing a service does not make such action a substantially related activity, even if the income will be used to accomplish the purpose or purposes of the authorized organization.)

b. Standards established by the Internal Revenue Service (IRS) and the courts with respect to 26 U.S.C. 513(a) and (c) of the Internal Revenue Code are used to determine whether the sale or providing of an advertised product or service, whether sold or offered by the organization or by another party, is substantially related to the qualifying purposes of an organization. (Advertisements in third-class material that meets the content requirements for a periodical publication need not meet the substantially related standard to be mailable at the special bulk third-class rates. See 5.4(d)(2) and 5.8.)

(1) If the advertising material is for a product or service that is not substantially related, it is not mailable at the special bulk third-class rates.

(2) If an organization pays unrelated business income tax on the profits from the sale of a product or the providing of a service, that activity is by IRS definition not substantially related. The fact that an organization does not pay such tax, however, does not establish that the activity is substantially related because other criteria may exempt the organization from payment. Thus, the inclusion of an advertisement for a product or service in a mailpiece may disqualify the piece for special bulk third-class rates, even if the mailer does not pay unrelated business income tax on its sale.

(3) Third-party paid advertisements may be included in material mailed at the special bulk third-class rates if the

products or services advertised are substantially related to one or more of the purposes for which the organization is authorized to mail at special bulk third-class rates. However, if the material contains one or more advertisements that are not substantially related, the material is not eligible for the special rates, unless it is part of material that meets the content requirements described in 5.8 and is not disqualified from using the special bulk third-class rates under another provision.

c. Announcements of activities, e.g., bake sale, car wash, charity auction, oratorical contest, are considered substantially related if substantially all the work is conducted by the members or supporters of an authorized organization without compensation.

d. Advertisements for products and services, including products and services offered as prizes or premiums, are considered substantially related if the products and services are received by an authorized organization as gifts or contributions.

e. An advertisement, promotion, offer, or subscription order form for a periodical publication meeting the eligibility criteria in E211 and published by one of the types of nonprofit organizations listed in 2.0 is mailable at the special bulk third-class rates.

[Renumber existing 5.8 as 5.12, renumber existing 5.9 as 5.11, and add new 5.8 as follows:]

5.8 Periodical Publication Content Requirements

Advertisements for products and services in materials that meet the content requirements for a periodical publication are mailable at the special bulk third-class rates. The material mailed must meet the following requirements:

a. Have a title. The title must be printed on the front cover page in a style and size of type that make it clearly distinguishable from other information on the front cover page.

b. Be formed of printed sheets. (It may not be reproduced by stencil, mimeograph, or hectograph processes. Reproduction by any other process is permitted.) Any style of type may be used.

c. Contain an identification statement on one of the first five pages of the publication that includes the following elements:

(1) Title.

(2) Issue date. The date may be omitted if it is on the front cover or cover page.

(3) Statement of frequency showing when issues are to be published (daily; weekly; monthly; monthly except June; four times a year in June, August, September, and December; annually; irregularly, etc.).

(4) Name and address of the authorized organization, including street number, street name, and ZIP+4 or 5-digit ZIP Code. The street number and street name are optional if there is no letter carrier service.

(5) Issue number. Every issue of each publication is numbered consecutively in a series that may not be broken by assigning numbers to issues omitted. The issue number may be printed on the front or cover page instead of in the identification statement.

(6) International Standard Serial Number (ISSN), if applicable.

(7) Subscription price, if applicable.

d. Consist of at least 25% nonadvertising matter in each issue. Advertising is defined in E211.11.0.

* * * * *

[Renumber current 5.8 and 5.9 as 5.12 and 5.11, respectively; add new 5.10 as follows:]

5.10 Products Mailable at Special Bulk Third-Class Rates

The following products are mailable at special bulk third-class rates:

a. Low-cost items within the meaning of 26 U.S.C. 513(h)(2), Internal Revenue Code. At the beginning of each calendar year, the value of low-cost items is adjusted for cost of living. The standard established on January 1, 1995, provided that low-cost items have a cost of not more than $6.56. The cost is the cost to the authorized organization that mails the item or on whose behalf the item is mailed.

b. Items donated or contributed to the qualified organization. Such items do not have to meet the definition of a low-cost item as described in 5.10a.

c. A periodical publication (as defined in E211) of a nonprofit organization unless it is ineligible under E370.5.0 to be mailed at the special bulk third-class rates.

* * * * *

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

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–11152 Filed 5–4–95; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–17–1–6023A; FRL–5197–7]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This document takes final action to approve the State Implementation Plan (SIP) submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standard (NAAQS) for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary lead smelter in Herculaneum, Missouri (Doe Run-Herculaneum).

DATES: This action will be effective July 5, 1995 unless by June 5, 1995 adverse or critical comments are received.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the: Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and EPA Air & Radiation Docket and Information Center, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION:

I. Background

On June 3, 1986, EPA issued a call for a revision to the Missouri SIP in response to violations of the NAAQS for lead near the Doe Run primary lead smelter in Herculaneum, Missouri. The state submitted an SIP revision on September 6, 1990, with additional materials submitted on May 8, 1991. After the state submitted the SIP, but before EPA acted on the state's submission, EPA promulgated a nonattainment designation for the area in the vicinity of Doe Run-Herculaneum under section 107(d) of the Clean Air Act (CAA), as amended. The designation was published on November 6, 1991 (56 FR 56694), and became effective on January 6, 1992.

As a result of EPA's promulgation of the nonattainment designation, the Part D requirements of the CAA became applicable to the Missouri SIP revision for Doe Run-Herculaneum. EPA granted limited approval for Missouri's 1990 SIP

revision on March 6, 1992 (57 FR 8076). EPA explained that the basis for the limited approval was that the state would be required to submit a supplemental SIP revision meeting the applicable Part D requirements.

On July 2, 1993, the state of Missouri submitted an SIP revision addressing the applicable Part D requirements of the CAA. The revision provided for additional control measures in response to unanticipated emissions associated with the control measures implemented under the 1990 SIP revision. These emissions resulted in violations of the lead NAAQS after the 1990 SIP revision attainment date of February 1, 1993. The July 1993 SIP revision was adopted by the Missouri Air Conservation Commission (MACC), after proper notice and public hearing, on June 29, 1993.

In a letter dated September 30, 1993, EPA informed the state that the proposed amendment to Missouri rule 10 CSR 10–6.120 lacked sufficient emission limits to ensure attainment of the standard. On October 7, 1993, EPA notified the state that the SIP revision did not contain contingency measures which adequately addressed the requirements of section 172(c)(9). Missouri and Doe Run agreed to the required changes at meetings held October 18 and 19, 1993. The changes to the SIP were adopted by the MACC at a public hearing held on March 31, 1994. Final changes to Missouri rule 10 CSR 10–6.120 were adopted by the MACC, after proper notice and public hearing, on April 28, 1994, and became effective on August 28, 1994.

The state submitted supplemental material to EPA on June 30, 1994. Upon review, it was noted that the Consent Order signed by the MACC on March 31, 1994, did not contain implementation language for contingency measures. EPA had informed the state of the need for such language in a letter dated February 23, 1994. The implementation language had been included in a prior order adopted by the MACC in June 1993, and had been available for public review. The language was inadvertently omitted from the final order signed by the MACC in March 1994. A new Consent Order, which included the missing language, was signed by the MACC on September 29, 1994, and submitted to EPA on November 23, 1994.

The July 2, 1993, SIP, as revised and adopted in March 1994, and the revised September 29, 1994, Consent Order, satisfy the Part D requirements of the CAA. The revised plan also contains a control strategy to address the violations of the NAAQS which occurred upon implementation of the control measures in the 1990 SIP revision. Dispersion modeling indicates that the subsequent control measures will result in attainment of the NAAQS for lead. The new attainment date for the 1993 SIP revision is June 30, 1995. In addition, the submittal includes an amendment to Missouri rule 10 CSR 10–6.120 that revises all point source emission limits to a lbs./24-hour basis, and establishes enforceable criteria for determining compliance.

II. Criteria for Approval

This SIP revision was reviewed using the criteria established by the CAA. The requirements for all SIPs are contained in section 110(a)(2) of the CAA. Section 172(c) of the CAA specifies the provisions applicable to areas designated as nonattainment for any of the NAAQS. Further guidance and criteria are set forth in the ''State Implementation Plans for Lead Nonattainment Areas; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (58 FR 67748).

III. Review of State Submittal

A. Control Strategy

In the 1993 SIP revision, the state generally used the emission inventory which was used in the 1990 SIP revision. However, it was necessary to reanalyze the facility because previously unanticipated emission points had been discovered and several existing emission sources had been relocated. Air dispersion modeling was used to determine that the additional controls were sufficient to attain the lead NAAQS.

The SIP contains the June 24, 1993, Consent Order, and a subsequent amendment to the Consent Order, dated March 1994, which were entered into by the Missouri Department of Natural Resources (MDNR) and the Doe Run Company. Both of these documents set forth the administrative requirements for the implementation of the control measures. The submittal also includes Missouri rule 10 CSR 10–6.120, which establishes enforceable emission limits and work practice requirements. The reader is referred to the EPA-prepared technical support document for a more complete discussion of the specific control measures to be implemented in the Consent Orders.

B. Attainment Demonstration

Section 192(a) of the CAA requires that SIPs must provide for attainment of the lead NAAQS as expeditiously as practicable but not later than five years from the date of an area's nonattainment designation. The lead nonattainment designation for the Herculaneum area was effective on January 6, 1992; therefore, the latest attainment date permissible by statute would be January 6, 1997. The Doe Run lead SIP demonstrates attainment by June 30, 1995, which meets the statutory requirement. This plan shows a predicted maximum ambient air lead concentration of 1.47 $\mu g/m^3$ which is below the NAAQS for lead of 1.5 $\mu g/m^3$.

The Industrial Source Complex Long-Term Model was used to demonstrate the adequacy of the control strategy. The procedures recommended in EPA's *Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1986, and *Supplement A to the Guideline on Air Quality Models (Revised)*, EPA 450/2–78–027R, July 1987, were followed.

C. Emission Inventory and Air Quality Data

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area.

The 1993 SIP revision emissions inventory (EI) relies heavily upon the 1990 SIP revision EI, which is based upon 1987 data. The 1990 baseline emissions were quantified through a review of journal articles, stack testing, personnel monitoring, and evaluation of post-1985 equipment and procedures. Dispersion modeling was employed in deriving the 1990 SIP control strategy which resulted in the 1990 postcontrol EI. The 1993 baseline EI was obtained by adjusting the 1990 postcontrol EI to account for dust surging problems associated with the installation of certain 1990 SIP controls, and the replacement of four scrubbers with a baghouse.

The state submittal provides a historical summary of the air quality from 1988 through the first calendar quarter of 1993. Ambient lead concentrations have fallen significantly with the implementation of the 1990 SIP controls; however, the average quarterly ambient lead concentrations at several monitors continue to remain above the NAAQS.

D. Reasonably Available Control Measures (RACM) (Including Reasonably Available Control Technology (RACT))

The submittal must contain provisions to assure that RACM (including RACT) are implemented (see

section 172(c)(1) of the CAA). See 57 FR 13549 and 57 FR 67748 for EPA's interpretation of the RACM and RACT requirement.

A 1989 report, entitled ''Evaluation of Lead Emission Controls at the Doe Run Company's Primary Lead Smelter at Herculaneum, Missouri,'' prepared for the Doe Run Company by Fluor Daniel, Inc. (the Fluor report), represents an RACT survey of the Herculaneum facility. The report contains a review of the unit processes and operating procedures, in use at the time the study was commissioned, relative to similar facilities. The report identified 24 potential emission control improvements and the associated capital outlay requirements. Each of these projects has been completed. The Consent Orders, which the state has submitted as part of its SIP revision, describe each project.

An RACM survey was conducted in accord with 57 FR 18072, EPA's guidance with respect to the selection of fugitive dust control measures. Five of the fifteen suggested measures were found to be applicable to the Herculaneum facility. The SIP adequately documents the reasons for which each measure was selected or rejected. Each selected measure is included in the revised Herculaneum Work Practice Manual and has been implemented in accordance with the schedule established in the June 24, 1993, Consent Order.

E. Reasonable Further Progress (RFP)

The SIP must provide for RFP, defined in section 171(1) of the CAA as such reductions in emissions of the relevant air pollutant as are required by Part D, or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

The emission reductions associated with the control strategy will be phased in according to the interim dates which are identified in the Consent Orders submitted with the SIP. These dates were established to allow for engineering and construction of control systems, and provide continuing improvement in air quality.

F. New Source Review (NSR)

Part D of Title I of the CAA requires that the submittal include a permit program for the construction and operation of new and modified major stationary sources. Missouri rule 10 CSR 10–6.020 identifies the current specific descriptions of the lead nonattainment areas in Missouri. 10 CSR 10–6.020 is utilized in conjunction with Missouri rule 10 CSR 10–6.060 which requires a permit for construction of, or major modification to, an installation with potential to annually emit one hundred (100) tons or more of a nonattainment pollutant, or a permit for a modification with potential to annually emit one hundred (100) tons or more of a nonattainment pollutant. Because these provisions include requirements for all nonattainment areas, and are not limited to lead, EPA is acting on the provisions in a separate rulemaking.

G. Contingency Measures

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the state or EPA, upon a determination that the area has failed to meet RFP or attain the lead NAAQS by the applicable attainment date.

The contingency measures included in the July 2, 1993, SIP submittal were determined to be inadequate to address possible air quality violations at the Herculaneum facility. EPA notified the state, in an October 7, 1993, letter, that the SIP revision did not contain contingency measures which adequately addressed the requirements of section 172(c)(9). Based on the modeling, EPA concluded that the maximum predicted ambient lead concentration occurs in the northern zone, which is significantly impacted by elevated process fugitive emissions. EPA requested that contingency measures be developed which would address these fugitive emissions. MDNR and Doe Run agreed to the required changes at meetings held October 18 and 19, 1993. The changes to the SIP were adopted by the MACC, after proper notice and public hearing, on March 31, 1994.

The contingency measures in the SIP will be invoked if, beginning with the calendar quarter following the attainment date, an exceedance of the lead NAAQS is recorded. MDNR will notify Doe Run-Herculaneum of the exceedance, and implementation of all of the contingency measures will begin within 60 days from receipt of that notification.

H. Enforceability

All measures and other elements in the SIP must be enforceable by the state and EPA (see sections 172(c)(6), 110(a)(2)(A), and 57 FR 13556). The state submittal includes a Consent Order entered into by the state and the Company which contains all of the control and contingency measures, with enforceable dates for implementation.

The state submittal also includes an amendment to Missouri rule 10 CSR 10–6.120 which revises all point source emission limits from a lbs./day to a lbs./24-hour basis, and establishes enforceable criteria for determining compliance. The change from lbs./day to lbs./24-hour was necessary to make the emission limits consistent with the new test methods specified in the rule for determining compliance. Missouri rule 10 CSR 10–6.120 contains provisions which are applicable to other lead smelters in the state. EPA has not reviewed the adequacy of the rule as it relates to sources other than the Herculaneum smelter. EPA proposes approval of this rule only as it relates to Doe Run-Herculaneum.

Changes to the Herculaneum Work Practice Manual have also been included with this SIP revision. The Work Practice Manual serves as an enforcement document for the state and EPA. These work practices are designed to limit the fugitive emissions at the facility and are enforced through recordkeeping requirements. Noncompliance with the established work practices is a violation of Missouri rule 10 CSR 10–6.120. Any change to the Work Practice Manual requires a revision to the Missouri SIP, per Missouri's May 8, 1991, submittal letter.

IV. Implications of This Action

This SIP revision will significantly expand the current SIP. It contains a control strategy which provides for modifications to various feed circuits, the installation of additional ventilation systems, and the installation of additional pollution control devices. The modeling performed in support of the SIP revision indicates that the emissions control strategy will result in attainment of the NAAQS for lead. In addition, Missouri rule 10 CSR 10–6.120 has been amended such that all point source emission limits will be based upon an enforceable 24-hour average emission rate.

EPA Action

By this action EPA grants full approval of Missouri's July 2, 1993; June 30, 1994; and November 23, 1994, submittals. This SIP revision meets the requirements of section 110 and Part D of the Clean Air Act and 40 CFR Part 51.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in the **Federal Register** publication, the EPA is proposing to

approve the SIP revision should adverse or critical comments be filed.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

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

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

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

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Dated: April 12, 1995.

Dennis Grams,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart AA—Missouri

2. Section 52.1320 is amended by adding paragraph (c)(87) to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

(87) In submittals dated July 2, 1993; June 30, 1994; and November 23, 1994, MDNR submitted an SIP to satisfy Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary smelter in Herculaneum, Missouri. Although Missouri rule 10 CSR 10–6.120 contains requirements which apply statewide to primary lead smelting operations, EPA takes action on this rule only insofar as it pertains to the Doe Run Herculaneum facility. Plan revisions to address the other lead smelters in the state are under development.

(i) Incorporation by reference.

(A) Revised regulation 10 CSR 10–6.120 (section (1), section (2)(B), section (3)) entitled Restriction of Emissions of Lead From Primary Lead Smelter-Refinery Installations, effective August 28, 1994.

(B) Consent Order, entered into between the Doe Run Company and MDNR, dated July 2, 1993.

(C) Consent Order amendment, signed by the Doe Run Company on March 31, 1994, and by MDNR on April 28, 1994.

(D) Consent Order amendment, signed by the Doe Run Company on September 6, 1994, and by MDNR on November 23, 1994.

(ii) Additional material.

(A) Revisions to the Doe Run Herculaneum Work Practice Manual submitted on July 2, 1993.

(B) Revisions to the Doe Run Herculaneum Work Practice Manual submitted on June 30, 1994.

§ 52.1323 [Amended]

3. Section 52.1323 is amended by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

[FR Doc. 95–10976 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[UT11–1–6726a, UT12–1–6727a, and UT13–1–6746a; FRL–5184–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this document, EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of Utah on November 12, 1993 and on May 20, 1994. The November 12, 1993 submittal included revisions to the State's new source review (NSR) permitting regulations to meet the new NSR requirements of the amended Clean Air Act (Act) for all of its nonattainment areas. The May 20, 1994 submittal included a revision to the State's definition of volatile organic compounds. The Governor submitted the nonattainment NSR rules with numerous other ozone SIP revisions and an ozone redesignation request for the Salt Lake and Davis County nonattainment areas. EPA will be acting on the other portions of the Governor's November 12, 1993 submittal in separate notices. EPA finds that the State's NSR rules meet the Federal nonattainment NSR permitting requirements of the Act for all of its nonattainment areas, and that the State's revised definition of volatile organic compounds is consistent with the federal definition.

DATES: This final rule is effective on July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed. Copies of the State's submittal and other relevant information are available for

inspection during normal business hours at the following locations: Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Division of Air Quality, Utah Department of Environmental Quality, P.O. Box 44820, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

A. Nonattainment NSR Requirements of the Amended Act

The air quality planning requirements for nonattainment NSR are set out in part D of title I of the Act. The EPA has issued a ''General Preamble'' describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment area NSR SIP requirements (see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of part D advanced in this notice and the supporting rationale. A brief discussion of the specific elements required in a State's nonattainment NSR program is also included in Section II.B. of this notice.

EPA is currently developing rule revisions to implement the changes under the 1990 Clean Air Act Amendments in the NSR provisions of parts C and D of title I of the Act. The EPA anticipates that the proposed rule will be published for public comment in early 1995. If EPA has not taken final action on States' NSR submittals by that time, EPA may generally refer to the proposed rule as the most authoritative guidance available regarding the approvability of the submittals. EPA expects to take final action to promulgate the rule revisions to implement the part C and D changes in early 1996. Upon promulgation of those revised regulations, EPA will review NSR SIPs to determine whether additional SIP revisions are necessary to satisfy the requirements of the rulemaking.

Prior to EPA approval of a State's NSR SIP submission, the State may continue permitting only in accordance with the new statutory requirements for permit applications completed after the relevant SIP submittal date. This policy was explained in transition guidance memoranda from John Seitz dated March 11, 1991 and September 3, 1992.

As explained in the March 11 memorandum, EPA does not believe Congress intended to mandate the more stringent title I NSR requirements during the time provided for SIP development. States were thus allowed to continue to issue permits consistent with requirements in their current NSR SIPs during that period, or to apply 40 CFR 51, Appendix S for newly designated areas that did not previously have NSR SIP requirements.

The September 3, 1992 memorandum also addressed the situation where States did not submit the part D NSR SIP revisions by the applicable statutory deadline. For permit applications complete by the SIP submittal deadline, States may issue final permits under the prior NSR rules, assuming certain conditions in the September 3 memorandum are met. However, for applications completed after the SIP submittal deadline, EPA will consider the source to be in compliance with the Act where the source obtains from the State a permit that is consistent with the substantive new NSR part D provisions in the amended Act. EPA believes this guidance continues to apply to permitting pending final action on Utah's NSR SIP submittal.

B. Volatile Organic Compound Definition

On February 3, 1992, EPA promulgated a definition of volatile organic compounds (VOCs) in 40 CFR 51.100(s). See 57 FR 3941–3946. Therefore, Utah updated its definition of VOCs in its regulations to reflect the federal definition. That revised definition was submitted by the State on June 10, 1994.

II. Analysis of State Submission

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566).

A. Procedural Background

1. New Source Review Rules

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[1] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(a)(B) if a completeness determination is not made by EPA within 6 months after receipt of the submission.

The State of Utah held public hearings on June 2, 1993 for the VOC/nitrogen oxides (NO_X) offset provisions and on August 4, 1993 for the other NSR revisions to entertain public comment on these SIP revisions. Following the public hearings, the VOC/NO_X offset rule was adopted by the State on June 17, 1993 and the other NSR revisions were adopted on September 30, 1993. These rule revisions were submitted to EPA on November 12, 1993 as a proposed revision to the SIP, along with other ozone SIP revisions and the ozone redesignation request for the Salt Lake and Davis County nonattainment areas.

Specifically, the State submitted revisions to its NSR permitting regulations in Utah Air Conservation Regulation (UACR) R307–1–1 and R307–1–3. The revisions to the State's NSR regulations were made to bring the State's NSR rules for all of its nonattainment areas up-to-date with the amended Act.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The initial submittal was found to be incomplete, and a letter dated January 19, 1994 was forwarded to the Governor indicating the administrative and technical deficiencies in the submittal. The State of Utah sued EPA on March 18, 1994 regarding EPA's incompleteness finding (State of Utah v. EPA, Case No. 94–9520). As part of the lawsuit settlement, EPA agreed to allow the State to repackage its submittal and request parallel processing of the ozone redesignation request for Salt Lake and Davis Counties. Therefore, on June 27,

[1] Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

1994, the State submitted a request for parallel processing of the ozone maintenance plan and resubmitted a reorganized ozone redesignation request which included, among other things, NSR rule revisions for all of the State's nonattainment areas. On the basis of the State's reorganized redesignation request and request for parallel processing, EPA withdrew the January 19, 1994 finding of incompleteness in a July 7, 1994 letter to the Governor and deemed the State to have submitted a complete ozone redesignation request, including a complete nonattainment area NSR submittal, on November 12, 1993.

Since the increased emission offset ratio requirements for new and modified sources of VOCs and NO_X in the State's moderate ozone nonattainment areas were not submitted by November 15, 1992, EPA made a finding, pursuant to section 179 of the Act, that the State failed to submit that SIP element and notified the Governor in a letter dated January 15, 1993. After the VOC/NO_X emission offset rules for the State's ozone nonattainment areas were resubmitted on June 27, 1994 along with the reorganized ozone redesignation request, EPA determined that the State's submittal was administratively and technically complete on July 7, 1994 as stated above. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

Promulgation of full approval of Utah's ozone NSR rules will fulfill EPA's obligation under section 110(c)(1) of the Act, which requires that EPA either approve the State's submittal or promulgate a NSR Federal implementation plan (FIP) within 24 months of EPA's finding that the State failed to submit the NSR rules (i.e, by January 15, 1995).

2. Volatile Organic Compound Definition

The State of Utah held a public hearing on March 9, 1993 for the revisions to the definition of VOCs in UACR R307–1–1 to entertain public comment on this SIP revision. Following the public hearing, the revised VOC definition was adopted by the State on March 26, 1993. This revision was submitted to EPA on May 20, 1994 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. The submittal was found to be complete, and a letter dated October 20, 1994 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the processing of the submittal.

B. Review of Submittal for Meeting the Nonattainment NSR Requirements of the Act

1. General Nonattainment NSR Requirements

The general statutory requirements for nonattainment NSR SIPs and permitting as amended by the 1990 Amendments are found in sections 172 and 173 of the Act. These requirements apply in all nonattainment areas. The following represents EPA's review of the State's regulation in meeting the NSR requirements of the amended Act:

(1) The amended Act repealed the construction ban provisions previously found in section 110(a)(2)(I) with certain exceptions.

No construction bans are currently imposed in Utah, so this requirement is inapplicable.

(2) Section 173(a)(1)(A) of the Act requires a demonstration for permit issuance that the new source growth does not interfere with reasonable further progress (RFP) for the area. In addition, calculations of emissions offsets must be based on the same emissions baseline used in the demonstration of RFP.

In UACR R307–1–3.3.2.C.(3), R307–1–3.3.3.A.(2), and R307–1–3.3.5, the State has established provisions which adequately address section 173(a)(1).

(3) Section 173(c)(1) of the Act requires that offsets must generally be obtained by the same source or other sources in the same nonattainment area. However, offsets may be obtained from other nonattainment areas if: The area in which the offsets are obtained has an equal or higher nonattainment classification; and emissions from the nonattainment area in which the offsets are obtained contribute to a National Ambient Air Quality Standard (NAAQS) violation in the area in which the source would construct.

In UACR R307–1–3.3.3.A.(1), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(4) Section 173(c)(1) of the Act requires that any emissions offsets obtained in conjunction with the issuance of a permit to a new or modified source must be in effect and enforceable by the time the new or modified source commences operation.

In UACR R307.1.3.3.3.A.(2), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(5) Section 173(c)(1) of the Act requires that emissions increases from new or modified major stationary sources are offset by real reductions in actual emissions.

In UACR R307–1–3.3.3.A.(2), the State has established provisions that adequately meet this requirement of section 173(c)(1).

(6) Section 173(c)(2) of the Act prohibits emissions reductions otherwise required by the Act from being credited for purposes of satisfying the part D offset requirements.

In UACR R307–1–3.3.3.A.(3), the State has established provisions that adequately meet the requirements of section 173(c)(2).

(7) Section 173(a)(3) provides that, as a condition of permit issuance, states must require the owner or operator of a proposed new or modified source to demonstrate that all major stationary sources under the same ownership or control are in compliance or are on a schedule for compliance with all applicable emission limitations and standards.

In UACR R307–1–3.3.2.C.(2), the State has established provisions that adequately meet the requirements of section 173(a)(3).

(8) Section 173(a)(2) requires a new or modified major stationary source to comply with the lowest achievable emission rate (LAER).

In UACR R307–1–3.3.2.C.(1), the State has established provisions that adequately meet the requirements of section 173(a)(2).

(9) Revised sections 172(c)(4), 173(a)(1)(B), and 173(b) of the Act limit and invalidate use of certain growth allowances in nonattainment areas.

This requirement is inapplicable because the State of Utah has not established any growth allowances in its nonattainment area SIPs.

(10) Revised section 173(a)(5) of the Act requires that, as a prerequisite to issuing any part D permit, an analysis of alternative sites, sizes, production processes, and environmental control techniques for a proposed source must be completed which demonstrates that the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

In UACR R307–1–3.1.10, the State has established provisions which adequately address the requirements of section 173(a)(5).

(11) Section 173(d) of the Act requires States to submit control technology information from permits to EPA for the purposes of making such information

available through the RACT/BACT/LAER clearinghouse.

Utah and EPA have established provisions in the annual State-EPA agreement requiring the State to submit information from nonattainment NSR permits to EPA's RACT/BACT/LAER clearinghouse. Thus, a process has been established to meet this requirement.

(12) Section 173(e) of the Act provides that States may allow any existing or modified source that tests rocket engines or motors to use alternative or innovative means to offset emissions increases from firing and related cleaning, under certain conditions.

In lieu of imposing any alternative offset measures the permitting authority may impose an emission limit amounting to no more than 1.5 times the average cost of stationary control measures adopted in that area during the previous three years.

In UACR R307–1–3.3.3.A.(4), the State has adopted provisions for innovative offsetting for rocket engine and motor firing consistent with sections 173(e)(1) through (e)(4) of the Act.

(13) Section 328 requires that sources located on the outer continental shelf (OCS) must be subject to the same requirements as would be applicable if the source were located in the corresponding onshore area.

Since the State of Utah is landlocked and not adjacent to any oceans, this requirement is inapplicable.

(14) Revised section 302(z) of the Act sets forth a new definition of ''stationary source'' reflecting Congressional intent that certain stationary internal combustion engines are subject to State regulation under stationary source permitting programs, while certain ''nonroad engines,'' defined in section 216(10), are generally excluded. On June 17, 1994, the EPA published regulations in 40 CFR Part 89 regarding new nonroad engines and vehicles, including a definition of nonroad engine (59 FR 31306).

EPA's action to approve this SIP revision is limited in that the action does not approve any regulation of nonroad engines in a manner inconsistent with section 209 of the Act and EPA regulations implementing section 209.

2. Applicability of Utah's Nonattainment NSR Provisions

EPA's initial review of the State's nonattainment NSR rules found that the applicability of the rules was unclear. Specifically, UACR R307–1–3.3.2.C. states that the nonattainment NSR provisions apply to a new or modified source if the Executive Secretary of the Utah Air Quality Board finds that the emissions from the proposed source would contribute to an existing violation of the NAAQS. EPA identified concerns with this language in an August 25, 1994 letter to the State, since applicability of the Federal nonattainment NSR requirements is based on the fact that a new or modified major source proposes to *locate* in a nonattainment area. In an October 18, 1994 letter, the State Air Director provided clarification that, under the State's rules, any new major source or major modification proposing to construct in a nonattainment area would be considered to contribute to an existing violation of the NAAQS and would therefore be subject to all of the State's nonattainment NSR requirements. In addition, the State's letter further explained that there is a more general requirement in UACR R307–1–3.1.8.B. which specifically provides that the Executive Secretary may only issue a permit if it is determined to be in accord with the ''new source review requirements for nonattainment areas under the Federal Clean Air Act.'' Thus, the State's regulations require the State to comply with the Federal nonattainment NSR requirements in approving any construction permit.

3. Nonattainment Area-Specific NSR Requirements

In addition to all of the general nonattainment NSR provisions mentioned above, there are also nonattainment area-specific NSR provisions in subparts 2, 3, and 4 of part D of the Act, some of which supersede these general NSR provisions because they are more stringent. The following provisions are the additional NSR provisions that apply in Utah's nonattainment areas and represent EPA's review of the State's regulation in meeting these requirements:

1. Ozone Nonattainment Areas

The general nonattainment NSR requirements discussed above are found in sections 172 and 173 of part D of title I of the Act and must be met in all nonattainment areas. Requirements for ozone that supplement or supersede these requirements are found in subpart 2 of part D. In addition, section 182(f) of subpart 2 states that the requirements for major stationary sources of VOCs shall apply to major stationary sources of NO_X unless the Administrator makes certain determinations related to the benefits or contribution of NO_X control to air quality.

Utah currently has two ozone nonattainment areas: Davis County and Salt Lake County, both of which are currently classified as moderate. (See 40 CFR 81.345 for Utah's ozone nonattainment area designations.) For moderate ozone nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

a. Definition of the term ''major stationary source'' that reflects the section 302(j) 100 tons per year (tpy) VOC and, presumptively, the 100 tpy NO_X thresholds for determination of whether a source is subject to the part D NSR requirements as a major source. In addition, a 40 tpy significance level for defining major modifications of both VOCs and NO_X must be established consistent with the significance level in 40 CFR 51.165(a)(1)(x).

b. Provisions to ensure that new or modified major stationary sources obtain offsets under section 182(a)(4) of the Act at a ratio of at least 1.15:1 in order to obtain an NSR permit.

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for any source of VOCs or NO_X located in an ozone nonattainment area or a lesser amount if required in part D of the Act. In addition, the definition of ''major modification'' in R307–1–1 provides that a modification that is significant for VOCs or NO_X shall be considered significant for ozone. The State has established a 40 tpy significance threshold for both VOCs and NO_X in the definition of ''significant'' in R307–1–1. Lastly, UACR R307–1–3.3.3.C. requires an offset ratio of at least 1.15:1 be met by new and modified sources proposing to locate in ozone nonattainment areas. Therefore, EPA finds that the State's NSR program meets the requirements for all of its ozone nonattainment areas.

In addition to meeting the NSR requirements for ozone nonattainment areas, the State has written the alternative siting analysis requirement in R307–1–3.1.10 and the 1.15:1 offset requirement in R307–1–3.3.3.C. to apply to new or modified major sources of VOCs or NO_X proposing to locate in the Salt Lake or Davis County area. In addition, the State has retained the nonattainment NSR thresholds for VOCs and NO_X for defining a major source proposing to locate in Salt Lake or Davis Counties (i.e., 100 tpy). Thus, the State intends these two nonattainment NSR provisions to apply in the Salt Lake and Davis County areas even after such areas are no longer designated nonattainment areas.

2. Carbon Monoxide Nonattainment Areas

The State of Utah has three CO nonattainment areas: Salt Lake City, currently not classified, Ogden, currently classified as moderate with a design value less than 12.7 parts per million (ppm), and Provo, currently classified as moderate with a design value greater than 12.7 ppm. (See 40 CFR 81.345 for Utah's CO nonattainment area designations.)

For both not classified and moderate CO nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy CO threshold, and a 100 tpy significance level for defining major modifications of CO consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for sources of CO locating in a CO nonattainment area. In addition, the State has established a 100 tpy significance threshold for CO in the definition of ''significant'' in R307–1–1. Therefore, EPA finds that the State's NSR rules meets the requirements for all of its CO nonattainment areas.

3. PM–10 Nonattainment Areas

The State of Utah has two PM–10 nonattainment areas, both of which are currently classified as moderate: Salt Lake County and Utah County. (See 40 CFR 81.345 for Utah's PM–10 nonattainment area designations.) For moderate PM–10 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

a. A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy PM–10 threshold, and a 15 tpy significance level for defining major modifications of PM–10, consistent with the significance level in 40 CFR part 51.

b. Section 189(e) of the amended Act requires that the control requirements applicable to major stationary sources of PM–10 must also apply to major stationary sources of PM–10 precursors, except where the Administrator of EPA has determined that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. PM–10 precursors may include VOCs, which form secondary organic compounds, sulfur dioxide (SO_2), which forms sulfate compounds, and NO_X, which form nitrate compounds. Thus, unless the EPA Administrator finds otherwise, States must submit rules applying all of the NSR provisions mentioned above to sources of PM–10 precursors, including the 100 tpy threshold for defining major stationary sources and the current significance level thresholds in 40 CFR 51.165(a)(1)(x) for each PM–10 precursor pollutant for defining major modifications.

EPA has not made a finding under section 189(e) that sources of PM–10 precursors do not contribute significantly in Utah's PM–10 nonattainment areas. In EPA's notice of proposed approval of the Salt Lake and Utah County PM–10 SIPs, EPA stated that PM–10 violations in both counties were attributable to sources of both SO_2 and NO_X (see 57 FR 60152, December 18, 1992). Approval of these PM–10 SIPs was promulgated on July 8, 1994 (59 FR 35036). Thus, in accordance with section 189(e), Utah is required to regulate new and modified major sources of SO_2 and NO_X as precursors to PM–10 in its NSR permitting rules.

In the applicable definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for any source of PM–10 or a PM–10 precursor located in a PM–10 nonattainment area or a lesser amount if required in part D of the Act. ''PM–10 precursor'' is defined in UACR R307–1–1 as including SO_2 and NO_X. In addition, the definition of ''major modification'' in UACR R307–1–1 provides that a modification that is significant for a PM–10 precursor shall be considered significant for PM–10. The State has established a 15 tpy significance level for PM–10 and 40 tpy significance levels for both SO_2 and NO_X in the definition of ''significant'' in R307–1–1.

In UACR R307–1–3.3.3.B., the State has adopted an additional provision requiring emission offsets for new and modified sources of PM–10 and PM–10 precursors that may not normally be subject to the nonattainment NSR permitting requirements. Specifically, this provision requires new sources or modifications to existing sources with total combined net emissions increases of PM–10, SO_2, and NO_X of greater than or equal to 25 tpy to obtain emission offsets. For sources or modifications between 25 and 50 tpy, the emission offset ratio required is 1:1, and for sources or modifications equal to or greater than 50 tpy, the emission offset ratio required is 1.2:1. For these offset determinations, the State rule provides that PM–10, SO_2, and NO_X will be treated on an equal basis.

This provision was originally submitted as a Group I PM–10 control measure for these areas before nonattainment NSR rules for PM–10 were required. This measure was continued as a control measure in the PM–10 SIP submittal for the Salt Lake and Utah County nonattainment areas, which EPA approved on July 8, 1994 (59 FR 35036). The basis for this measure, according to Section 9.A.7. of the Utah SIP, was to ensure new growth did not increase the cap on industrial emissions. Since the State now has adopted nonattainment NSR rules for new and modified major sources of PM–10 or PM–10 precursors (i.e., new sources greater than 100 tpy of PM–10 or a PM–10 precursor) in accordance with the requirements of the amended Act, EPA interprets UACR R307–1–3.3.3.B. to apply only to those new and modified sources which would not otherwise be subject to the major source/major modification nonattainment NSR provisions in R307–1–3.

It is necessary to make this distinction because, in determining applicability to the major source nonattainment NSR requirements, EPA only allows a source to consider reductions in the same pollutant when calculating the potential to emit of a new source or the net emissions increase from a modification. Also, in meeting the emission offset requirement of the nonattainment NSR provisions once it is determined that a source is subject to the nonattainment NSR provisions, EPA currently only allows restricted interpollutant trading between PM–10 and PM–10 precursors. Specifically, new major sources or major modifications of a PM–10 precursor are allowed to obtain offsets from reductions in PM–10. Otherwise, new major sources and major modifications must obtain offsets from reductions in the same pollutant.

As discussed above under ''Applicability of Utah's Nonattainment NSR Provisions,'' UACR R307–1–3.1.8.B. specifically provides that the Executive Secretary may only issue a permit if it is determined to be in accord with the ''new source review requirements for nonattainment areas under the Federal Clean Air Act.'' Thus, in order for the State to comply with this provision, the State must interpret its regulations as stated in the above paragraph. Consequently, the State's provision in UACR R307–1–3.3.3.B. applies to new sources or modifications which would have combined emissions of PM–10 and PM–10 precursors greater than or equal to 25 tpy, but this

provision does not apply to any new source or modification considered to be major based on the emissions of a single pollutant. In the case of a new major source or major modification, the nonattainment NSR provisions for major sources of UACR R307–1–3, including the general offset requirements in R307–1–3.3.3.A., and the nonattainment NSR requirements under the Clean Air Act would apply to such source or modification in accordance with UACR R307–1–3.1.8.B.

Because the State has adequately addressed all of the other general NSR requirements, EPA finds that the State's NSR program meets all of the requirements for all of its PM–10 nonattainment areas.

4. Sulfur Dioxide Nonattainment Areas

The State of Utah has two SO_2 nonattainment areas, which are defined as Salt Lake County and portions of Tooele County. (See 40 CFR 81.345 for Utah's SO_2 nonattainment area designations.) For SO_2 nonattainment areas, States must submit the following NSR provisions, in addition to provisions meeting the general NSR requirements in sections 172 and 173 of the Act discussed above:

A definition of the term ''major stationary source'' that reflects the section 302(j) 100 tpy SO_2 threshold, and a 40 tpy significance level for defining major modifications of SO_2, consistent with the significance level in 40 CFR 51.165(a)(1)(x).

In the definition of ''major source'' in UACR R307–1–1, the State has established a 100 tpy threshold for SO_2. In addition, the State has established a 40 tpy significance threshold for SO_2 in the definition of ''significant'' in R307–1–1. Therefore, EPA finds that the State's NSR rules meets the requirements for all of its SO_2 nonattainment areas.

For further information on these requirements and the State's provisions which meet these requirements, please see the Technical Support Document (TSD) accompanying this notice.

C. Review of VOC Definition Submittal

EPA has reviewed the State's definition of VOC in UACR R307–1–1 and finds that it is consistent with the federal definition in 40 CFR 51.100(s). For further information, see the TSD.

Final Action

EPA is approving the revisions to Utah's nonattainment NSR rules in UACR R307–1–1 and R307–1–3, which were submitted by the Governor on November 12, 1993 and May 20, 1994 for approval in the SIP. The State of Utah has submitted an approvable plan to implement the NSR provisions of part D of the Act. Each of the NSR program elements discussed above have been adequately addressed in the State's regulations for all of the State's nonattainment areas.

EPA's approval includes the following sections of the Utah Air Conservation Regulations: (1) The forward of R307–1–1 and the following definitions in R307–1–1 that have been revised since EPA's last approval of R307–1–1 (July 8, 1994, 59 FR 35036) and which apply to the State's NSR permitting program in R307–1–3: ''air contaminant,'' ''air contaminant source,'' ''air pollution,'' ''allowable emissions,'' ''ambient air,'' ''best available control technology (BACT),'' ''board,'' ''department,'' ''dispersion technique,'' ''emission limitation,'' ''executive director,'' ''executive secretary,'' ''major modification,'' ''major source,'' ''PM–10 precursor,'' ''person,'' ''temporary,'' and ''volatile organic compound (VOC);'' (2) R307–1–3.1.8; 3) R307–1–3.1.10; and 4) R307–1–3.3.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. Under the procedures established in the May 10, 1994 **Federal Register** (59 FR 24054), this action will be effective on July 5, 1995 unless, by June 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 5, 1995.

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 24, 1995.

Robert L. Duprey,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c)(28) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(28) On November 12, 1993, the Governor of Utah submitted revisions to its permitting requirements to satisfy the nonattainment new source review provisions in the amended Clean Air Act for all of its nonattainment areas. On May 20, 1994, the Governor of Utah submitted a revision to Utah's definition of volatile organic compounds.

(i) Incorporation by reference.

(A) Utah Air Conservation Regulations, R307–1–1, the forward and the following definitions: ''air contaminant,'' ''air contaminant source,'' ''air pollution,'' ''allowable emissions,'' ''ambient air,'' ''best available control technology (BACT),'' ''board,'' ''department,'' ''dispersion technique,'' ''emission limitation,'' ''executive director,'' ''executive secretary,'' ''major modification,'' ''major source,'' ''PM–10 precursor,'' ''person,'' ''temporary,'' and ''volatile organic compound (VOC);'' effective November 15, 1993, printed June 24, 1994.

(B) Utah Air Conservation Regulations, R307–1–3.1.8, R307–1–3.1.10, and R307–1–3.3; effective August 16, 1993, printed May 26, 1994.

(ii) Additional material.

(A) Letter dated October 18, 1994 from Russell A. Roberts to Douglas M. Skie clarifying applicability of Utah's nonattainment new source review permitting requirements.

[FR Doc. 95–10821 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[NC70–2–6861a: NC63–1–6394a; FRL–5189–3]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment, Health and Natural Resources (NCDEHNR) for the purpose of implementing an emission statement program for stationary sources within the North Carolina ozone nonattainment/maintenance areas: Davidson County, Durham County, Forsyth County, Gaston County, Guilford County, Mecklenburg County, Wake County, the Dutchville Township portion of Granville County, and that part of Davie County bounded by the Yadkin River, Dutchman's Creek, North Carolina Highway 801, Fulton Creek, and back to the Yadkin River. The SIP was submitted on August 15, 1994, by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for North Carolina.

DATES: This final rule is effective July 5, 1995, unless someone submits adverse or critical comments by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of North Carolina may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365.

North Carolina Department of Environment, Health and Natural Resources, 512 North Salisbury Street, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4215. Reference file NC70–2–6861.

SUPPLEMENTARY INFORMATION: A SIP revision was submitted by the State of North Carolina on December 17, 1993, to satisfy the requirements of section 182(a)(B) of the Clean Air Act Amendments of 1990 (CAA) (November 15, 1990). This revision was submitted as a temporary rule and EPA held off action until the State submitted a permanent rule on August 15, 1994. The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated December 5, 1994, addressed to Mr. A. Preston Howard, Director, NCDEHNR, was sent to NCDEHNR indicating the submittal was administratively complete.

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting. In general, the program must include, at a minimum, provisions for applicability, compliance, and specific source requirements detailed below.

A. SIP Revision Submission

The NCDEHNR submitted the North Carolina emission statement regulation on August 15, 1994, which meets the emission statement requirement.

B. Program Elements

The State emission statement program must, at a minimum, include provisions covering applicability of the regulations, a compliance schedule for sources covered by the regulations, and the specific reporting requirements for sources. The emission statement submitted by the source should contain, at a minimum, a certification that the information is accurate to the best knowledge of the individual certifying the statement. The North Carolina submittal meets these requirements.

C. Applicability

Section 182(a)(3)(B) requires that states with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.).

The states may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base

year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. The North Carolina submittal waives the emission statement requirement for sources with less than 25 tons per year combined of actual plant-wide NO_X and VOC emissions and has included calculations of these emissions in their 1990 Base Year Emission Inventory.

Final Action

In this action, EPA is approving the Emission Statement SIP revision submitted by the State of North Carolina through the NCDEHNR on August 15, 1994. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 5, 1995 unless, by June 5, 1995, adverse or critical comments are received. If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 5, 1995.

Under section 307(b)(1) of the Act, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Act, 42 U.S.C. 7607 (b)(2).)

The OMB has exempted this action from review under Executive Order 12866.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Emission statements, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, SIP requirements, Volatile organic compounds.

Dated: March 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart II—North Carolina

2. Section 52.1770 is amended by adding paragraph (c)(73) to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

(73) Revisions to the State of North Carolina State Implementation Plan (SIP) concerning emission statements were submitted on August 15, 1994, by the North Carolina Department of Environment, Health and Natural Resources.

(i) Incorporation by reference.

Revisions to North Carolina Regulation 15A NCAC 2Q .0207, effective July 1, 1994.

(ii) Other material. None.

[FR Doc. 95–10823 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WI45–01–6501; FRL–5203–1]

Approval of the State Implementation Plan; Wisconsin

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On January 10, 1995, the United States Environmental Protection Agency (USEPA) proposed approval of the State Implementation Plan (SIP) revision request for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas. The USEPA received no public comments on the above proposed approval. This rule finalizes the approval of the first element of the VMT offset program for the Milwaukee area.

EFFECTIVE DATE: This action will be effective June 5, 1995.

ADDRESSES: Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.) United

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

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AT–18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background Information

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15 percent periodic reduction requirement of the Act; and (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

II. Final Rulemaking Action

In this action, USEPA is approving the first element of the VMT offset SIP revision submitted by the State of Wisconsin. As noted in the January 10, 1995, proposal, the USEPA will not take final action on the second element until the State has submitted a complete 15 percent ROP plan. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

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

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Dated: April 20, 1995.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C 7401–7671q.

Subpart YY—Wisconsin

2. Section 52.2585 is amended by adding paragraph (g) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(g) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to offset growth in emissions.

[FR Doc. 95–11046 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[WA 32–1–6894a; FRL–5192–1]

Approval and Promulgation of State Implementation Plan: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Washington's contingency measure plan as a revision to Washington's State Implementation Plan (SIP) for carbon

monoxide (CO). EPA's action is based upon a revision request which was submitted by the state to satisfy the requirement of the Clean Air Act Amendments for the Puget Sound Carbon Monoxide Nonattainment Area.

DATES: This final rule is effective on July 5, 1995 unless by June 5,1995 someone submits adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Montel Livingston, SIP Manager, Air & Radiation Branch (AT–082), EPA, Docket WA 32–1–6894, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Air & Radiation Branch, 1200 Sixth Avenue (AT–082), Seattle, Washington 98101, and the Washington State Department of Ecology, P.O. Box 47600, Olympia, Washington, 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–6917.

SUPPLEMENTARY INFORMATION:

I. Background

States containing CO nonattainment areas with design values of 12.7 ppm or more were required to submit, among other things, contingency measures to satisfy the provisions under section 172(c)(9) and 187(a)(3). These provisions require contingency measures to be implemented in the event that, among other things, an area fails to reach attainment by the applicable attainment date, December 31, 1995.

Contingency measures must be implemented within 12 months after the finding of failure to attain the CO NAAQS. Once triggered they must take effect without further action by the state or EPA. Therefore, all contingency measures must be adopted and enforceable prior to submittal to EPA.

The CAAA do not specify how many contingency measures are needed or the magnitude of emission reductions they must provide if an area fails to attain the CO NAAQS. The EPA believes that one appropriate choice of contingency measures would be to provide for the implementation of sufficient vehicle miles traveled (VMT) reductions or emissions reductions to counteract the effect of one year's growth in VMT while the state revises its SIP to incorporate all of the new requirements of a serious CO area.

II. This Action

In this action, EPA is approving Washington's SIP revision submitted to EPA on December 6, 1994 for the Puget Sound Carbon Monoxide Nonattainment Area, because it meets the applicable requirements of the Act.

The state of Washington held a public hearing on July 7, 1994, at the Department of Ecology's Northwest Regional Office in Bellevue, Washington, to entertain public comment on the CO contingency measure SIP revision. Ecology submitted the plan to EPA on December 6, 1994 as a proposed revision to the SIP.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria delineated at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on January 26, 1994 and a letter dated February 2, 1995 was forwarded to the Director indicating the completeness of the submittal.

A. Analysis of State Submission

Washington's CO contingency plan for Puget Sound consists of a two-tiered program relying upon separate trigger mechanisms. The first tier of the contingency measures is a public outreach and education program. The measure, if triggered, will provide information to the public about carbon monoxide problems and discourage individuals from using single-occupancy-vehicle (SOV) transit modes and encourage reduced transit use, particularly during bad air quality episodes. The implementing agencies would include the State Departments of Ecology and Transportation, the Puget Sound Air Pollution Control Agency (PSAPCA), the Puget Sound Regional Council, cities, counties, and local transit agencies. Implementation of the public outreach and information contingency measure will be triggered if there is a violation of the NAAQS prior to the attainment date of December 31, 1995. The measure is estimated to cost $320,000 and to reduce emissions by .5 percent to 1 percent (of estimated 1995 CO emissions). This contingency measure is similar to the contingency measure for vehicle miles travelled forecasts (VMT), but is funded through a different mechanism. If the contingency measures for both VMT and maintaining the NAAQS are activated simultaneously, the additional funds would be used to increase the number, variety, and frequency of direct outreach mechanisms such as press releases, busboard advertisements, etc.

Tier two of the contingency measures consists of increasing the minimum required winter gasoline oxygenate content from the federally required 2.7 percent to 3.1 percent. If triggered, this contingency measure would be implemented by the Puget Sound Air Pollution Control Agency and the fuel industry. The measure would be triggered if the Puget Sound area fails to attain the NAAQS by the attainment date and EPA Region 10 provides notification for implementation of the measure. Once triggered, gasoline suppliers will be required to increase the oxygenate percentage beginning the following winter season. To ensure that oxygenated gasoline with a minimum content of 3.1 percent or higher is used for the entire subsequent winter season, PSAPCA will notify suppliers no later than March 1st. In the meantime, PSAPCA will issue a written advisory to encourage gasoline suppliers to aim for an average minimum oxygenate content of 3.1 percent or higher for the remainder of the winter season in which the measure is triggered. Increasing the minimum oxygenate percentage is estimated to reduce emissions 4.6 percent to 9.4 percent (from estimated 1995 CO emissions).

The Washington State Department of Ecology chose a two-tiered contingency measure based on input received during the public review process. The rationale behind the separate triggers was to proactively implement the Tier 1 measure in the event that the region appeared to be ''at risk'' for failing to attain the federal standards, and the Tier 2 measure (which includes continuation of the Tier 1 measure) if the region subsequently failed to attain the federal standards.

Both contingency measures have committed funding. The public outreach and information program will be funded by delaying unobligated transportation projects in the regional Transportation Improvement Program (TIP), and diverting funding to the contingency measure. Gasoline consumers and the fuel industry would bear the cost of implementing the wintertime oxygenated fuel measure.

III. Administrative Review

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

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

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

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 5, 1995 unless, by June 5, 1995, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on the separate proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 5, 1995.

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Ozone, Volatile organic compounds.

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

Dated: April 7, 1995.

Chuck Clarke,

Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart WW—Washington

2. Section 52.2470 is amended by adding paragraph (c)(52) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(52) On December 6, 1994, the Director of WDOE submitted to EPA a contingency measure SIP revision for the Puget Sound Carbon Monoxide Nonattainment Area to satisfy certain applicable requirements of the Act.

(i) Incorporation by reference.

(A) Letter dated November 30, 1994 from WDOE to EPA submitting the CO revision for the Puget Sound area and, ''A Plan for Attaining and Maintaining National Ambient Air Quality Standards for the Puget Sound Carbon Monoxide Nonattainment Area,'' replacement pages 10–1 through 10–3, dated November 16, 1994, adopted November 29, 1994, and Attachment B of Addendum E, ''Contingency Measure Plan Element for the Central Puget Sound Region Carbon Monoxide State Implementation Plan—Final Plan,'' pages 1–15, dated May 26, 1994, and adopted November 29, 1994.

[FR Doc. 95–11048 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MS–19–1–6758a; FRL–5195–1]

Mississippi: Revisions to Prevention of Significant Deterioration of Air Quality Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the State Implementation Plan (SIP) to include modifications of the state prevention of significant deterioration (PSD) of air quality regulation to update the adoption by reference in Regulation APC–S–5, of the amendments and revisions to the Federal regulations promulgated in 40 CFR 52.21 and 51.166 as of the date of adoption of this revision. This plan revision provides for inclusion of particulate matter increment requirements measured as PM_{10} (particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers) and incorporation of revisions to the Guideline on Air Quality Models (including Supplement B) as promulgated by EPA in 40 CFR 51.166(l) and 40 CFR part 51, appendix W. This plan revision further provides for inclusion of amendments and revisions to definitions and any other sections of 40 CFR 52.21 and 51.166 as promulgated by EPA. The revision and associated regulation amendments were adopted on December 9, 1993, by the Mississippi Commission on Environmental Quality and became state effective on January 9, 1994.

DATES: This action will be effective July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Kimberly Bingham at EPA Region 4 address listed below. Copies of the material submitted by the State of Mississippi may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347–3555 ext. 4195.

SUPPLEMENTARY INFORMATION: On January 26, 1994, the State of Mississippi through the Department of Environmental Quality, submitted a SIP revision.

The SIP, which was adopted on December 9, 1993, and became State effective on January 9, 1994, updates the adoption by reference in Regulation APC–S–5 of the Federal regulations for PSD of air quality as promulgated in 40 CFR 52.21 and 52.166 as of December 9, 1993. Changes were made to paragraphs one and two of Regulation APC–S–5, which updated the promulgation date to December 9, 1993, and deleted the phrase ''the date of adoption of this regulation'' in paragraph one. The sentence now reads, ''40 CFR 52.21 and 51.166 as used in this regulation refer to the federal regulations as promulgated by December 9, 1993.'' The phrases in paragraph two ''hereby adopted and'' and ''by reference'' were deleted and replaced with ''adopted by reference.'' The sentence now reads, ''All of the subsections of 40 CFR 52.21 other than subsections (a) [Plan disapproval], (q) [public participation], (s) [Environmental impact statement], and (u) [Delegation of authority] are incorporated herein and adopted by reference by the Mississippi Commission on Environmental Quality as official regulations of the State of Mississippi and shall hereafter be enforceable as such except for the changes set forth in Section 3. of this regulation.''

The purpose of this revised submittal is that it provides for the inclusion of the revised PM_{10} increments and the Guideline on Air Quality Models (including Supplement B) as promulgated by EPA (*See e.q.*, 40 CFR 51.166(c), 51.166(l) and part 51, App. W). The submittal also provides for inclusion of amendments and revisions to definitions and any other sections of the above referenced Federal regulations as promulgated by EPA.

The SIP revision affects all sources of air emissions that are subject to 40 CFR 52.21, PSD, and satisfies the applicable requirements of the Clean Air Act (CAA) and 40 CFR 51.166. The revision includes provisions for emission limitations, all PSD increments that are applicable, and the protection of visibility as provided in 40 CFR 52.21.

The EPA is currently developing proposed rules to implement statutory revisions made to the nonattainment new source review and PSD programs in 1990 amendments to the CAA. The EPA expects that the proposed rules will be published within the next few months. The EPA also expects to issue in the Spring of 1995, proposed rules to reform and improve the PSD program. Additional PSD SIP changes may be necessary, depending upon the contents of the revisions to the PSD program rules.

Revised section 302(z) of the CAA sets forth a new definition of ''stationary source'' reflecting Congressional intent that certain stationary internal combustion engines are subject to State regulation under stationary source permitting programs, while certain ''nonroad engines,'' defined in section 216(10) of the CAA, are generally excluded. On June 17, 1994, the EPA published regulations in 40 CFR part 89 regarding new nonroad engines and vehicles, including a definition of nonroad engine (59 FR 31306). In this action, EPA approval of this SIP revision is limited in that it does not include the regulation of nonroad engines in a manner inconsistent with section 209 of the CAA and EPA regulations implementing section 209.

Final Action

In this action, EPA is approving the aforementioned revisions in this submittal because they are consistent with the applicable requirements of the CAA, implementing regulations and EPA policy. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective July 5, 1995 unless, by June 5, 1995 adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 5, 1995.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2)).

The OMB has exempted these actions from review under Executive Order 12866.

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

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the federal SIP-approval does

not impose any new requirements, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: April 12, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

Subpart Z—Mississippi

2. Section 52.1270 is amended by adding paragraph (c)(26) to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

(26) The Mississippi Department of Environmental Quality has submitted revision to Regulation APC-S–5. The purpose of this regulation is to adopt by reference Federal regulations for the prevention of significant deterioration of air quality as required by 40 CFR 51.166 and 52.21.

(i) Incorporation by reference.

(A) Regulations of the prevention of significant deterioration of air quality—Regulation APC–S–5 effective January 9, 1994.

(ii) Additional information—None.

[FR Doc. 95–11050 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH54–1–6164a; FRL–5201–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving, through ''direct final'' procedure, a redesignation request and maintenance plan for the Dayton-Springfield, Ohio area as a revision to Ohio's State Implementation Plan (SIP) for ozone. The revision is based on a request from the State of Ohio to redesignate Montgomery, Greene, Clark, and Miami Counties from nonattainment to attainment for ozone, and to approve the maintenance plan for the area. The State has met the requirements for redesignation contained in the Clean Air Act (CAA), as amended in 1990. The redesignation request is based on ambient monitoring data that show no violations of the ozone National Ambient Air Quality Standard (NAAQS) during the three-year period from 1990 through 1992. In the proposed rules section of this **Federal Register**, USEPA is proposing approval of this requested redesignation and SIP revision, and is now soliciting public comments on this action. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a subsequent final rule based on the proposed rule.

DATES: This final rule is effective July 5, 1995 unless adverse or critical comments are received by June 5, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Angela Lee at (312) 353–5142 before visiting the Region 5 Office.) United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments can be mailed to: William MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5142.

SUPPLEMENTARY INFORMATION: On November 8, 1993, Ohio submitted a redesignation request and section 175A maintenance plan for Montgomery, Greene, Miami, and Clark Counties. The USEPA reviewed these submittals against the redesignation criteria set forth by section 107(d)(3)(E) of the Act, which are discussed in a September 4, 1992, memorandum from John Calcagni, Director of the Air Quality Management Division, Office of Air Quality Planning and Standards, to Directors of Regional Air Divisions, entitled, ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni Memorandum). A second memorandum dated September 17, 1993, signed by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, entitled, ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS on or after November 15, 1992'' was also used to evaluate Ohio's request. An analysis of these submittals is contained in a Technical Support Document (TSD), dated January 17, 1995.

I. Background

The 1977 Act required areas that were designated nonattainment based on a failure to meet the ozone NAAQS, to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. For Ohio, Montgomery, Greene, Miami and Clark Counties were designated nonattainment for ozone, see 43 FR 8962 (March 3, 1978), 43 FR 45993 (October 5, 1978), and 40 CFR part 81.

After enactment of the amended Act on November 15, 1990, the nonattainment designation of the Dayton-Springfield area continued by operation of law according to section 107(d)(1)(C)(i) of the Act; furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) (56 FR 56694, November 6, 1991), codified at 40 CFR 81.336.

More recently, ambient monitoring data show no violations of the ozone NAAQS in the Dayton-Springfield area during the period from 1990 through 1992. Therefore, the area became eligible for redesignation from nonattainment to attainment consistent with the amended Act. To ensure continued attainment of the ozone standard, Ohio submitted an ozone maintenance SIP for the Dayton Springfield area to USEPA on November 8, 1993. On November 8, 1993 Ohio requested redesignation of the area to attainment with respect to the ozone NAAQS. On December 20, 1993, Ohio held a public hearing on the maintenance plan and redesignation request.

II. Evaluation Criteria

The 1990 Amendments revised section 107(d)(3)(E) to provide five specific requirements that an area must

meet in order to be redesignated from nonattainment to attainment.

1. The area must have attained the applicable NAAQS.

2. The area has meet all relevant requirements under section 110 and part D of the Act.

3. The area has a fully approved SIP under section 110(d) of the Act.

4. The air quality improvement must be permanent and enforceable.

5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

Each of these requirements are addressed below.

A. Section 107(d)(3)(E)(i). The Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS). For ozone, an area is considered in attainment of the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on quality assured monitoring data for three complete, consecutive calendar years. A violation of the NAAQS occurs when the annual average number of expected exceedances is greater than 1.0 at any site in the area at issue. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 ppm. The data should be collected and quality-assured in accordance with 40 CFR Part 58, and recorded in the Aerometric Information Retrieval System (AIRS) in order for it to be available to the public for review.

Ohio submitted ozone monitoring data recorded in the Dayton-Springfield area during the years 1983 through June, 1993. The ozone monitoring network consists of five monitors. Two are located in Clark County, one in Montgomery County, and the other in Preble County. Two slight exceedances of the ozone standard have been monitored since 1989. One exceedance of 0.125 ppm occurred in 1993 at the Timberlane monitor in Montgomery County. The other exceedance which occurred at the Urbana Road monitor (Clark County) in 1994 also measured 0.125 ppm. Data stored in AIRS was used to determine the annual average expected exceedances for the years 1990, 1991, 1992, 1993, and 1994. Data contained in AIRS have undergone quality assurance review by the State and USEPA. Since the annual average number of expected exceedances for each monitor during the most recent three years are less than 1.0, the Dayton-Springfield area is considered to have attained the standard.

B. Section 107(d)(3)(iii). The Administrator determines that the improvement in air quality is due to permanent and enforceable measures. The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, Ohio estimated emission reductions from a nonattainment year (1988) to an attainment year (1990). Ohio submitted documentation which showed that in 1990 VOC emissions dropped almost ten percent from 1988 levels.

Most of the emission reductions which occurred over this time period resulted from federally mandated controls on the volatility of gasoline [1] and air pollution controls installed on new automobiles through the Federal Motor Vehicle Emissions Control Program (FMVCP). These controls reduced mobile source emissions by about 32 tons per day (tpd). Since these reductions result from federally mandated controls, the USEPA considers these reductions to be permanent and enforceable.

Stationary source shutdowns accounted for a decrease of 3.2 tpd in actual VOC emissions between 1988 and 1990. A 2.7 tpd increase in actual stationary source VOC emissions was estimated from permits to install (PTIs) issued in the area between 1988 and 1990. Since the operating permits for the shut down stationary sources have been revoked, and have been documented in the redesignation request, the USEPA considers the emission reductions to be permanent and enforceable. Overall, stationary source VOC emissions declined 0.5 tpd between 1988 and 1990.

Ohio used economic indicators to show that the area was not experiencing an economic downturn during this time period. Bureau of Economic Analysis (BEA) projections for manufacturing earnings from 1988 to 1995 indicate an annual growth rate of one percent for all Standard Industrial Classification (SIC) codes. BEA regional projections of population, personal income and earnings, and employment by place of work from 1973 to 1988 and from 1995 to 2040 increase from 1988 levels to 1995.

Ohio's demonstration that the improvement in air quality was due to permanent and enforceable reductions meets the requirements set forth in the Calcagni Memorandum.

C. The Area must have a fully approved maintenance plan meeting the requirements of Section 175A. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. The Calcagni Memorandum provides further guidance on the required content of a maintenance plan.

An ozone maintenance plan should address the following five areas: The attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment and a contingency plan. The attainment emissions inventory identifies the emissions level in the area which is sufficient to attain the ozone NAAQS, and includes emissions during the time period which had no monitored violations. Maintenance is demonstrated by showing that future emissions will not exceed the level established by the attainment inventory. Provisions for continued operation of an appropriate air quality monitoring network are to be included in the maintenance plan. The State must show how it will track and verify the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which ensure prompt correction of any violation of the ozone standard.

1. Attainment Inventory

The State has developed an adequate attainment emission inventory for 1990 that identifies the level of emissions in the Dayton-Springfield area sufficient to attain the ozone NAAQS. The 1990 attainment inventory was based on comprehensive inventories of VOC and NO_X emissions from area, stationary, and mobile sources for 1990. The 1990 base year emission inventory represents 1990 average summer day actual emissions for the Dayton-Springfield area, and was prepared in accordance with USEPA guidance. USEPA's TSD prepared for the 1990 base year emission inventory SIP revision contains a detailed analysis of this inventory. This inventory was approved as satisfying the requirements of section 182(a)(1) for an emissions inventory on March 22, 1995 (60 FR 15053).

2. Maintenance Demonstration

To demonstrate continued attainment, Ohio projected point, area, and mobile source VOC and NO_X emissions from the year 1990 to the year 2005. The projections incorporate reductions from existing controls, the enhanced vehicle inspection and maintenance I/M program (enhanced I/M) and Stage II vapor recovery program (Stage II). The Stage II Vapor Recovery program is currently being implemented in the Dayton-Springfield area. The enhanced

[1] The Reid Vapor Pressure changed from 11.5 psi in 1988 to 10.5 psi in 1990.

I/M program is expected to be operational in 1996. The emissions reductions from Stage II and enhanced I/M offset emissions increases during the maintenance period. The projections also provide for a growth cushion for existing and new industrial sources. These projections show that the level of emissions established by the attainment inventory will not be exceeded during the maintenance period 1990–2005. Table 1 lists the emissions for the years 1990, 1996, 2000, and 2005. All emissions were converted to tons per day for a typical summer day.

Area source emissions were projected using population as a growth indicator for all area source subcategories. This method is acceptable since the recommended growth factors for the four largest area source subcategories in terms of emissions in the Dayton-Springfield area are less than the population growth factor. The recommended growth factors for area source subcategories are listed in Table III.3 of USEPA's guidance document entitled ''Procedures for Preparing Emissions Projections'', dated July 1991. Projections of total population for the period 1990 to 2005 were obtained using data from the Ohio Data User's Center and population patterns. This data yields a growth rate of less than one percent. A one percent annual growth rate was used because of expected residential growth in Greene and Miami Counties, and because point source growth by SIC has been forecast by the Ohio Environmental Protection Agency (OEPA) to be about one percent per year for any category.

Ohio projected point source emissions by estimating changes in emissions expected from source shutdowns, growth from new sources and potential growth from existing sources. Historical data for point source growth from 1988 to 1992 indicate that PTIs averaged about 700 tons per year (tpy). Shutdowns from 1988 to 1992 accounted for a reduction of 300 tons per year of actual emissions. Based on this information, Ohio added 400 tons of VOC emissions to each year out to the year 2005 to account for new, non-offset source growth. Existing companies were assumed to expand their actual emissions to permitted levels. The difference between actual and allowable emissions is 3250 tons. This was spread equally, areawide, over the 15 year period from 1990 to 2005. Ohio accounted for known changes to sources for each year between 1990 and 2005 and applied a growth factor based on manufacturing employment data provided by the Bureau of Economic Analysis (BEA), United States Department of Commerce, to derive inventories for all ensuing years. (BEA manufacturing employment growth for the aggregate of source categories is one percent.) To account for growth of existing sources, Ohio added 217 TPY each year to the total emissions from the previous year.

Mobile source emissions were projected by forecasting vehicle miles travelled (VMT) from the year 1990 to the year 2005. A 1.28 percent per year VMT growth rate was used for the four county area. This growth rate was determined by considering the future highway network, forecasts of socio-economic data, and 1990 Highway Performance Modeling System (HPMS) data. Stage II and enhanced I/M were accounted for in the MOBILE5a program which was used to determine the emission factors for the Dayton-Springfield area. Mobile source emissions for the year 2005 were produced by multiplying MOBILE5a VOC and NO_X emission factors by the projected average weekday VMT for each county.

TABLE 1.—MAINTENANCE DEMONSTRATION

Source category	1990	1996	2000	2005
VOC Emissions (tons per day)				
Point	37.4	61.6	77.7	97.4
Biogenic	105.2	105.2	105.2	105.2
Area	54.9	58.3	60.6	64.4
Mobile (on-road)	103.6	45.5	39.4	31.7
Total	301.1	270.6	282.9	298.7
NO_X Emissions (tons per day)				
Point	32.2	34.4	36.0	38.2
Area	36.5	38.5	39.9	41.7
Mobile (on-road)	60.9	42.7	41.2	39.4
Total	129.6	115.6	117.1	119.3

3. Maintenance Measures

Ohio chose to implement Stage II and enhanced I/M in the Dayton-Springfield area as maintenance measures. The Ohio Stage II rule requires owners and operators of gasoline dispensing facilities that dispense greater than 10,000 gallons of fuel per month (50,000 gallons per month in the case of an independent small business marketer) to install and operate gasoline vehicle refueling vapor recovery systems. Vapor recovery systems control the release of VOC, benzene, and toxics emitted during the refueling process. Enhanced I/M will be implemented in Green, Montgomery and Clark Counties (Miami County is excluded because its population is less than 100,000). Ohio's emissions projections show that the Stage II rule and enhanced I/M requirements provide the necessary VOC emissions reductions to offset desired new source growth and allow for maintenance of the ozone NAAQS.

The Stage II and enhanced I/M SIP revisions must be fully approved before USEPA can consider the maintenance plan to be fully approved. On October 20, 1994, the USEPA partially approved and partially disapproved Ohio's SIP revision for implementation of the Stage II program (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' Only those Stage II provisions previously approved by USEPA are part of the Dayton-Springfield maintenance plan. Ohio's I/M SIP revision, which allows an area to opt into enhanced I/M, was approved on April 4, 1995 (60 FR 16989). (The approval of the redesignation is contingent upon the approval of the I/M SIP revision. Consequently, should the direct final notice approving the I/M SIP Revision be withdrawn as a result of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

All existing VOC RACT controls required in the ozone SIP for the Dayton-Springfield area and new RACT controls incorporated in the VOC RACT SIP revision approved on March 23, 1995, remain in effect after redesignation of the region to attainment.

4. Tracking Maintenance

The OEPA and Regional Air Pollution Control Agency (RAPCA) will regularly monitor ozone air quality. In the redesignation request, RAPCA committed to continue operating and maintaining the five existing ozone monitors consistent with the requirements of Federal and State monitoring guidelines. Backup monitoring equipment will also be maintained.

The OEPA and RAPCA will develop comprehensive mobile, point, and area emissions inventories every 3 years beginning with the year 1993. Updates will be provided for intervening years.

The point source inventory will be updated annually with facility and permit data. The area source inventory will be updated using new data and estimation procedures. The mobile source inventory will be updated to incorporate new VMT estimates and revised USEPA mobile emissions models. OEPA will submit annual progress reports to USEPA which summarize available VOC emissions data.

5. Emission Budgets

The mobile source emissions budgets for purposes of determining the conformity status of transportation plans and transportation improvement plans in the Dayton-Springfield maintenance area are 31.7 tons VOC/day and 39.4 tons NO_X/day. Ohio obtained this emissions budget by calculating emissions for each county. The emissions budget for Clark County is 7.8 tons NO_X/day and 4.31 tons VOC/day.

6. Contingency Plan

If a violation is monitored, Ohio has committed to adopt and implement new Control Technology Guideline (CTG) VOC RACT rules and NO_X RACT rules according to schedules shown in Table 2. If the sum of point, area, and mobile source VOC emissions exceed the 1990 attainment inventory level, Ohio has committed to adopt and implement new CTG VOC RACT rules according to the schedule shown in Table 2. The new VOC RACT rules that will serve as a contingency measure include rules for the following 11 Control Technology Guideline (CTG) categories found in section 183(a) of the amended CAA: Synthetic Organic Chemicals Manufacturing Industry (SOCMI) distillation, SOCMI reactors, wood furniture, plastic parts coating (business machines), plastic parts coating (other), offset lithography, industrial wastewater, autobody refinishing, SOCMI batch processing, VOL storage tanks, and clean up solvents.

The maintenance plan for Montgomery, Greene, Clark and Miami Counties contains all the necessary elements and is acceptable.

TABLE 2.—CONTINGENCY MEASURE IMPLEMENTATION SCHEDULE

Control measure	Triggering Event	Action	Completion date (from trigger)
New CTG VOC RACT rules.	violation of ozone NAAQS or exceedance of 1990 attainment inventory.	Identify and verify ambient violation or exceedance of attainment inventory.	1 month.
		Survey potential VOC categories or specific sources.	3 months.
		Propose revised rules for the Dayton-Springfield area.	6 months.
		Adopt rule revisions for the Dayton-Springfield area.	9 months.
		Source demonstration of compliance or submittal of schedule to achieve.	12 months.
		Achieve compliance with revised requirements of OAC 3745–21.	24 months.
NO_x RACT rules	Violation of ozone NAAQS	Identify and verify ambient violation and issue Director's Orders.	1 month.
		Adoption of NO_x RACT rules	9 months.
		Achieve compliance with requirements of OAC 2745–14–03 or request extension.	18 months.

D. The Area must have met all applicable requirements under Section 110 and Part D. Section 107(d)(3)(E) requires that, for an area to be redesignated, the area must have met all applicable requirements under section 110 and Part D. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

1. Section 110 Requirements

General SIP elements are delineated in section 110(a)(2) of Title I, Part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the State after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for Part C (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Ohio SIP was reviewed to ensure that all requirements under the amended Act were satisfied. Section 110 was amended in 1990, and the Dayton area SIP meets the requirements of the amended section 110(a)(2). A number of the requirements did not change in substance and, therefore, USEPA believes that the pre-1990 amendment SIP meets those requirements. Many of the requirements that were amended in 1990 are duplicative of other requirements in the Act, and USEPA has determined that the Dayton SIP is consistent with the requirements of section 110 of the amended Act.

2. Part D Requirements

Before the Dayton area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Dayton area was classified as moderate (56 FR 56694). Therefore, in order to be redesignated, the State must

meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

a. Section 172(c) Requirements

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under section 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years after an area has been designated as nonattainment under the amended Act. Furthermore, as noted above, some of these section 172(c) requirements are superseded by more specific requirements in subpart 2 of part D. The State has satisfied all of the section 172(c) requirements necessary for the Dayton area to be redesignated upon the basis of the November 8, 1993, redesignation request.

USEPA has determined that the section 172(c)(2) reasonable further progress (RFP) requirement (with parallel requirements for a moderate ozone nonattainment area under subpart 2 of part D, due November 15, 1993) was not applicable, as the State of Ohio submitted this redesignation request on November 8, 1993, and RFP was not due until November 15, 1993. Also the section 172(c)(9) contingency measures and additional section 172(c)(1) non-RACT reasonable available control measures (RACM) beyond those required in the SIP, are no longer necessary, since no earlier date was set for requirement of these measures.

The section 172(c)(3) emissions inventory requirement has been met by the submission and approval (60 FR 15053) of the 1990 base year inventory required under subpart 2 of part D, section 182(a)(1).

As for the section 172(c)(5) NSR requirement, USEPA has determined that areas being redesignated need not comply with the NSR requirement prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described fully and a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment'' and is based on the Agency's authority to establish *de minimis* exceptions to statutory requirements. *See Alabama Power Co. v. Costle,* 636 F. 2d 323, 360–61 (D.C. Cir. 1979). As discussed below, the State of Ohio has demonstrated that the Dayton area will be able to maintain the standard without part D NSR in effect and, therefore, the State need not have a fully-approved part D NSR program prior to approval of the redesignation request for Dayton. Ohio's part C PSD program will become effective in the Dayton area upon redesignation to attainment.

Finally, for purposes of redesignation, the Dayton SIP was reviewed to ensure that all requirements of section 110(a)(2), containing general SIP elements, were satisfied. As noted above, USEPA believes the SIP satisfies all of those requirements.

b. Section 176 Conformity Plan Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act (transportation conformity), as well as to all other Federal actions (general conformity).

The USEPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). Pursuant to section 51.396 of the transportation conformity rule and section 51.851 of the general conformity rule, the State of Ohio is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994, and November 30, 1994, respectively. Because the deadlines for these submittals did not come due prior to the date the Dayton redesignation request was submitted, however, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

3. Subpart 2 Requirements

The Dayton-Springfield area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. The requirements which came due prior to the submission of the request to redesignate the Dayton-Springfield area must be fully approved into the SIP prior to redesignating the area to attainment. These requirements are discussed below:

(i) 1990 Base Year Emission Inventory

The 1990 base year emission inventory was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this submittal on March 22, 1995 (60 FR 15053).

(ii) Emission Statements

The emissions statement SIP was due on November 15, 1992. It was submitted to the USEPA on March 15, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863).

(iii) VOC RACT Requirements

Sections 182(a)(2)(A) and 182(b)(2) establish VOC RACT requirements applicable to moderate ozone nonattainment areas such as Dayton. Section 182(a)(2)(A) required the submission to USEPA of all rules and corrections to existing VOC RACT rules that were required under the RACT provision of the pre-1990 CAA (referred to as RACT ''fix-ups''). Section 182(b)(2) required the submission to USEPA of (1) VOC RACT rules for all VOC sources covered by a CTG issued before the date of enactment of the 1990 CAA amendments (a requirement that the State has previously met), (2) VOC RACT for each VOC source covered by a CTG issued between the enactment of the 1990 CAAA and the attainment date (which is not an applicable requirement for purposes of this redesignation since the due date for these rules is November 15, 1994, a date after the submission of the redesignation request), and (3) VOC RACT for all other major stationary sources of VOC located in the area.

On June 9, 1988, August 24, 1990, and June 7, 1993, Ohio submitted VOC RACT rules to USEPA for approval. In a final rulemaking action, the USEPA partially approved, partially disapproved, and granted partial limited approval/limited disapproval to portions of Ohio's VOC RACT rules on May 9, 1994 (see 58 FR 49458). Ohio submitted negative declarations for source categories which must be subject to RACT but for which there are no sources in the Dayton-Springfield area. The USEPA has reviewed revised VOC RACT rules which addressed identified deficiencies. Ohio's VOC RACT rules submittals have now been approved in a direct final notice published on March 23, 1995 (60 FR 15235). Thus, the State has now satisfied all of the VOC RACT requirements applicable to the Dayton area. (The approval of this redesignation is contingent upon the approval of the VOC RACT rules and the 1990 Base-

Year Emissions Inventory. Thus, this redesignation will not become effective until the approval of the VOC RACT rules and the 1990 Base-Year Emissions Inventory become effective. Consequently, should the direct final notice approving the VOC RACT rules or 1990 Base-Year Inventory be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

(iv) Stage II Vapor Recovery (Stage II)

Section 182(b)(3) required States to submit Stage II rules to USEPA for moderate ozone nonattainment areas by November 15, 1992. Ohio submitted Stage II regulations as a SIP revision on June 7, 1993. However, as the USEPA promulgated onboard rules on April 6, 1994 (59 FR 16262), Stage II is no longer required for moderate ozone nonattainment areas (see section 202(a)(b). Thus, a Stage II program is not an applicable requirement for purposes of determining if the area has met all the section 110 and part D requirements. However, Ohio is implementing Stage II as a maintenance measure.

(v) Vehicle Inspection and Maintenance (I/M)

The USEPA's final I/M regulations in 40 CFR Part 85 require the State to submit to the USEPA a fully adopted I/M program by November 15, 1992. Ohio submitted the I/M rules on May 26, 1994. This submittal was approved on April 4, 1995, at 60 FR 16989. (The approval of this redesignation is contingent upon the approval of the I/M SIP revision. Consequently, should the direct final notice approving the I/M SIP Revision be withdrawn as a consequence of adverse comment, this direct final notice approving the redesignation will also be withdrawn and final action will be taken on the redesignation at a later date.)

(vi) 1.15:1 VOC and NO_X Offsets Requirement for NSR

As explained above, USEPA has determined that areas need not comply with the part D NSR requirements of the Act in order to be redesignated, provided that the area is able to demonstrate maintenance without part D NSR in effect. As maintenance has been demonstrated for the Dayton area without part D NSR in effect, USEPA is not requiring that the area have a fully-approved part D NSR plan meeting the requirements of sections 182 (a) and (b) prior to redesignation.

(vii) NO_X Requirement

Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, such requirement does not apply to an area such as Dayton if the Administrator determines that NO_X reductions would not contribute to attainment. The Administrator has made such a determination based upon three years of clean air quality data and has approved the State of Ohio's request to exempt the Dayton area from the section 182(f) NO_X requirements (60 FR 3760). Thus, the State of Ohio need not comply with the NO_X requirements of section 182(f) for Dayton to be redesignated. If a violation is monitored in the Dayton-Springfield area, Ohio has committed to adopt and implement NO_X RACT rules as a contingency measure.

E. Section 107(d)(3)(E)(ii). The Administrator has fully approved the applicable implementation plan for the area under Section 110(k). USEPA has reviewed the SIP to ensure that it contains all measures that were due under the amended 1990 Act. Based on the approval of submittals under the pre-amended CAA, and USEPA's approval of SIP revisions under the amended CAA, USEPA has determined that the Dayton-Springfield area has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed below. (45 FR 72122, 60 FR 3760, 60 FR 15035, 60 FR 15235, and 60 FR 16989.

III. Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA's regional oxidant model (ROM) indicate that ozone precursor emissions from various States west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The State of Ohio has provided documentation that VOC and NO_X emissions in the Dayton-Springfield area will remain below attainment levels for the next eleven years. Should emissions exceed attainment levels, the contingency plan will be triggered. In addition, Ohio is required to submit a revision to the maintenance plan eight years after redesignation to attainment which demonstrates that the NAAQS will be maintained until the year 2015. The USEPA is currently developing policy which will address long range impacts of ozone transport. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. The USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

The USEPA notified Environment Canada of this action. The redesignation is not expected to have any adverse impact on Canada since emissions are expected to remain below levels associated with attainment conditions in the Dayton area.

IV. Final Rulemaking Action

The State of Ohio has met the requirements of the Act for revising the Ohio ozone SIP. The USEPA approves the redesignation of Montgomery, Greene, Miami, and Clark Counties to attainment areas for ozone. In addition, the USEPA approves the maintenance plan into the ozone SIP for these Counties. As noted earlier, this approval is contingent upon the direct final approval of Dayton's VOC RACT rules, Ohio's I/M SIP revision, and Dayton's 1990 Base-Year Emissions Inventory becoming effective.

The USEPA is publishing this action without prior proposal because USEPA considers this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in this **Federal Register** publication, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on July 5, 1995, unless USEPA receives adverse or critical comments on this redesignation by June 5, 1995, or by April 21, 1995, regarding the 1990 Base-Year Emissions inventory published at 60 FR 15053, or by April 24, 1995, regarding the VOC RACT notice published at 60 FR 15235, or by May 4, 1995, regarding Ohio's I/M SIP revision published at 60 FR 16989. If USEPA receives comments adverse to or critical of any of these approvals, USEPA will withdraw this redesignation approval before its effective date by publishing a subsequent **Federal Register** notice which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice(s).

Any parties interested in commenting on this action should do so at this time. If no such comments are received, USEPA hereby advises the public that this redesignation will be effective on July 5, 1995.

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

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any SIP. Each request for revision to any SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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

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

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 5, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Air pollution control, Environmental protection, National parks, and Wilderness areas.

Dated: March 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1885 is amended by removing paragraph (a)(5) and revising paragraph (b) to read as follows:

§ 52.1885 Control strategy: Ozone.

* * * * *

(b) The maintenance plans for the following counties are approved:

(1) Preble County.

(2) Columbiana County.

(3) Jefferson County.

(4) Montgomery, Greene, Miami, and Clark Counties. This plan includes implementation of Stage II vapor recovery and an enhanced vehicle inspection and maintenance program.

(5) Lucas and Wood Counties.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PURPOSES

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

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.336 is amended by revising the entry in the ozone table for the Dayton-Springfield area to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
* *	*	*	*	*
Dayton-Springfield Area:				
Clark County	July 5, 1995	Attainment.		
Greene County	July 5, 1995	Attainment.		
Miami County	July 5, 1995	Attainment.		
Montgomery	July 5, 1995	Attainment.		
* *	*	*	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–10972 Filed 5–4–95; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 2

Substance Abuse and Mental Health Services Administration; Confidentiality of Alcohol and Drug Abuse Patient Records

RIN: 0905–AD97

AGENCY: Substance Abuse and Mental Health Services Administration, PHS, HHS.

ACTION: Final rule.

SUMMARY: The Department published a notice of proposed rulemaking in the **Federal Register** at 59 FR 42561 (August 18, 1994) with corresponding corrections at 59 FR 45063 (August 31, 1994), which proposed a clarification to the ''Confidentiality of Alcohol and Drug Abuse Patient Records'' regulations codified at 42 CFR part 2. Specifically, the Department proposed to clarify that, as to general medical care facilities, these regulations cover only specialized individuals or units in such facilities that hold themselves out as providing and provide alcohol or drug abuse diagnosis, treatment or referral for treatment and which are federally assisted, directly or indirectly. The Secretary has considered the comments received during the comment period, and is amending the regulations.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Sue Martone, SAMHSA, Room 12C15, 5600 Fishers Lane, Rockville, Maryland 20857, tel. (301) 443–4640.

SUPPLEMENTARY INFORMATION: The ''Confidentiality of Alcohol and Drug Abuse Patient Records'' regulations, 42 CFR part 2, implement section 543 of the Public Health Service Act, 42 U.S.C. § 290dd–2, as amended by section 131 of the ADAMHA Reorganization Act, Pub. L. 102–321 (July 10, 1992). The regulations were promulgated as a final rule on July 1, 1975 (40 FR 27802) and amended on June 9,1987 (52 FR 21798). After considering the comments, the Department is revising the regulations to clarify the definition of ''program.''

Background of the Interim Final Rule and Summary of and Responses to Public Comments

A. Notice of Proposed Rulemaking

The notice of proposed rulemaking published at 59 FR 42561 (August 18, 19940 proposed to revise 42 CFR part 2 to clarify the ambiguity in the regulations regarding the definition of ''program.'' This ambiguity was identified in the case *United States v. Eide*, 875 F. 2d 1429, 1438 (9th Cir. 1989), where the court held that the Veterans Administration Medical Center's (VAMC) general emergency room is a ''program'' as defined by the regulations. In reaching this conclusion, the court relied on the clause that ''[p]rogram means a person which in whole or in part holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment, or referral for treatment.'' *Id.* The court ruled that the VAMC was a ''person'' which is defined at section 2.12 to mean ''an individual, * * * Federal, State or local government or any other legal entity,'' and concluded that ''[a] hospital emergency room, while obviously also performing functions unrelated to drug abuse, serves as a vital first link in drug abuse diagnosis, treatment and referral.'' *Id.*

As indicated in the NPRM, the Department believed this interpretation too broadly defined the term ''program'' in the regulations. *See* 59 FR 42561, 42562. Accordingly, the Department proposed to clarify the definition of ''program'' in the regulations to ensure that it encompasses only (1) an individual or entity (other than a general medical facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or (2) an identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or 93) medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers.

B. Public Comments

Two commenters believed that the revised definition of ''program'' was too narrow. One of these commenters believed that the definition of ''program'' should include all physicians and other hospital and emergency room personnel who treat substance abusers. The other commenter believed that emergency room personnel should be covered by the regulations because they serve as an important source of referrals for substance abuse treatment. Both commenters believed that relief from the confidentiality rules could discourage persons who abuse substances from seeking services for other medical problems.

It should be noted that the clarification which was proposed was the intent of the revisions made to the regulations in 1987. *See* 52 FR 21796, 21797 (June 9, 1987). As indicated in the NPRM, prior to the 1987 amendments, the regulations applied to any record relating to substance abuse whether the information was obtained from an emergency room, a general medical unit or a general practitioner so long as there was a Federal nexus. In 1987, however, it was the intent of the Department to limit the applicability of the regulations to specialized programs and personnel so as to simplify administration of the regulations. It was the Department's position that this limitation would not significantly affect the incentive to seek treatment provided by the confidentiality protection. *See* 52 FR at 21797. Furthermore, the Department questioned whether applicability of the regulations to general medical care facilities addressed the intent of Congress to enhance treatment incentives for alcohol and drug abuse, since many substance abuse patients are treated in a general medical care facility not because they have made a decision to seek substance abuse treatment, but because they have suffered a trauma or have an acute condition with a primary diagnosis of something other than substance abuse. *Id.*

The Department is not aware of any evidence that the narrowing of the applicability of the regulations in 1987 (at least for jurisdictions other than the Ninth Circuit) has adversely affected substance abusers from seeking treatment whether for substance abuse or other medical problems. The Department is also not persuaded that encompassing all health care facilities and providers who provide alcohol and drug abuse treatment only as an incident to the provision of general medical care is warranted in light of the economic impact such a regulation would have on a substantial number of facilities which do not specialize in substance abuse treatment, referral or diagnosis.

One Federal agency believed that the proposed definition of ''program'' does not provide sufficient guidance to law enforcement, particularly the phrase ''holds itself out as * * *.'' That agency believed that the definition presents an opportunity for a practitioner who does not engage in substance treatment or referral for treatment, to designate himself or herself as a ''program,'' thereby avoiding regulatory or investigative scrutiny.

It should be noted that, in the definition of a ''program,'' a private sector practitioner must not only hold himself or herself out as providing such treatment, referral or diagnosis, but also must provide such treatment, referral or diagnosis. Therefore, even though a person may hold himself or herself out as providing substance abuse treatment, diagnosis or referral, that person would not constitute a program if he or she does not provide such treatment, diagnosis or referral.

It should also be noted that, even if the regulations do apply, the regulations do not bar investigative or regulatory scrutiny of such programs. Law enforcement agents may obtain a court order to place an undercover agent in a program, 42 CFR 2.67, or a court order directing a program to disclose patient identifying information for use of records to investigate or prosecute a program, 42 CFR 2.66.

This Federal agency also requested that the Department provide more guidance to law enforcement on the phrase ''holds itself out as'' so as to enable them to determine whether an investigation of a particular practitioner via patient records or undercover operations would require a court order. This agency suggested that the Department require private practitioners who provide such treatment, diagnosis or referral to indicate this through, for example, state licensing procedures, advertising or the posting of notice in their offices.

The Department believes that private practitioners may hold themselves out as providing substance abuse treatment, diagnosis or referral by the means described above. However, the primary purpose of the statute is to protect the confidentiality of alcohol and drug abuse patient records. The Department does not believe that requiring all programs to, for example, post notice in some conspicuous place (stating that they were subject to these regulations) is meaningful, since it does not necessarily mean that the regulations would not be applicable if such signs were not posted. Given their questionable value, such requirements would place an unnecessary burden on programs. Furthermore, federally assisted programs are to inform law enforcement officials who are seeking records that they are covered by the regulations and cannot provide patient records without a court order, thus placing such officials on notice.

Finally, although the law and the implementing regulations require that law enforcement officials take additional measures to obtain certain information (*i.e.*, court orders to obtain patient records or to place an undercover agent in a program), the Department believes that the narrowing of these regulations to specialized programs and practitioners should make it easier for such officials to identify ''programs'' to who these regulations are applicable and, thus, to obtain the relevant court orders.

Economic Impact

This rule does not have cost implications for the economy of $100 million or otherwise meet the criteria for a major rule under Executive Order 12291, and therefore do not require a regulation impact analysis. Further, these regulations will not have a significant impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Federal Supremacy

These regulations are not intended to preempt the field of law which they cover to the exclusion of all State laws in that field. However, consistent with established principles of constitutional law, the Federal regulations will supersede State law to the extent that there is a conflict. See 42 CFR 2.20 for further discussion of the relationship between these regulations and State laws.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 2

Alcohol abuse, alcoholism, Confidentiality, Drug abuse, Health records, Privacy.

Dated: February 14, 1995.

Philip R. Lee,

Assistant Secretary for Health.

Approved: March 22, 1995.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, part 2 of title 42, Code of Federal Regulations, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 is revised to read as follows:

Authority: Sec. 408 of Pub. L. 92–255, 86 Stat. 79, as amended by sec. 303 (a), (b) of Pub L. 93–282, 83 Stat. 137, 138; sec. 4(c)(5)(A) of Pub. L. 94–237, 90 Stat. 244; sec. 111(c)(3) of Pub. L. 94–581, 90 Stat. 2852; sec. 509 of Pub. L. 96–88, 93 Stat. 695; sec. 973(d) of Pub. L. 97–35, 95 Stat. 598; and transferred to sec. 527 of the Public Health Service Act by sec. 2(b)(16)(B) of Pub. L. 98–24, 97 Stat. 182 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290ee–3) and sec. 333 of Pub. L. 91–616, 84 Stat. 1853, as amended by sec. 122(a) of Pub. L. 93–282, 88 Stat. 131; and sec. 111(c)(4) of Pub. L. 94–581, 90 Stat. 2852 and transferred to sec. 523 of the Public Health Service Act by sec. 2(b)(13) of Pub. L. 98–24, 97 Stat. 181 and as amended by sec. 106 of Pub. L. 99–401, 100 Stat. 907 (42 U.S.C. 290dd–3), as amended by sec. 131 of Pub. L. 102–321, 106 Stat. 368, (42 U.S.C. 290dd–2).

2. In § 2.11, the definition of *Program* is revised to read as follows:

§ 2.11 Definitions.

* * * * *

Program means:

(a) An individual or entity (other than a general medical care facility) who holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(b) An identified unit within a general medical facility which holds itself out as providing, and provides, alcohol or drug abuse diagnosis, treatment or referral for treatment; or

(c) Medical personnel or other staff in a general medical care facility whose primary function is the provision of alcohol or drug abuse diagnosis, treatment or referral for treatment and who are identified as such providers. (See § 2.12(e)(1) for examples.)

* * * * *

3. Section 2.12(e)(1) is amended by adding the following sentence at the end to read as follows:

§ 2.12 Applicability.

* * * * *

(e) * * * (1) * * * However, these regulations would not apply, for example, to emergency room personnel who refer a patient to the intensive care unit for an apparent overdose, unless the primary function of such personnel is the provision of alcohol or drug abuse diagnosis, treatment or referral and they are identified as providing such services or the emergency room has promoted itself to the community as a provider of such services.

* * * * *

[FR Doc. 95–10860 Filed 5–4–95; 8:45 am]

BILLING CODE 4120–20–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–170]

Radio Broadcasting Services; Bemidji and Red Lake, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238C1 to Bemidji, Minnesota, as that community's third commercial FM broadcast service in response to a petition filed by J. Thomas Lijewski. *See* 58 FR 35421, July 1, 1993. The coordinates for Channel 238C1 at Bemidji are 47–28–29 and 94–52–49. In response to a counterproposal filed by Red Lake Band, we will allot Channel 231C1 to Red Lake, Minnesota, on the Red Lake Reservation. The coordinates for Red Lake are 47–55–30 and 95–19–00. Canadian concurrence has been received for both allotments. With this action, this proceeding is terminated.

DATES: Effective June 16, 1995. The window period for filing applications for Channel 238C1 at Bemidji, Minnesota, and Channel 231C1 at Red Lake, Minnesota, will open on June 16, 1995, and close on July 17, 1995.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 93–170, adopted April 20, 1995, and released May 2, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW, Suite 140, Washington, D.C. 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding Channel 238C1 at Bemidji and Red Lake, Channel 231C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–11116 Filed 5–4–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF ENERGY

48 CFR Parts 926, 952, and 970

RIN 1991–AB11

Acquisition Regulation: Implementation of Section 3021 of the Energy Policy Act of 1992

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) hereby amends the Department of Energy Acquisition Regulation (DEAR) to carry out Section 3021 of the Energy Policy Act of 1992 which requires DOE to achieve a 10 percent goal for awards of prime contracts and subcontracts for specific types of universities and for small business concerns owned and controlled by socially and economically disadvantaged individuals and by women.

EFFECTIVE DATE: June 5, 1995.

FOR FURTHER INFORMATION CONTACT: Robert M. Webb, Office of Policy (HR–51), Office of Procurement and Assistance Management, U.S. Department of Energy, Washington, DC 20585, (202) 586–8264.

SUPPLEMENTARY INFORMATION:

I. Background
  A. Discussion
  B. Disposition of Comments
II. Procedural Requirements
  A. Regulatory Review
  B. Review Under Executive Order 12778
  C. Review Under the Regulatory Flexibility Act
  D. Review Under the Paperwork Reduction Act
  E. Review Under Executive Order 12612
  F. National Environmental Policy Act

I. Background

A. Discussion

Section 3021(a) of Energy Policy Act of 1992 (Pub. L. 102–486) requires that DOE, to the extent practicable, provide that the obligation of not less than 10 percent of the total combined amounts obligated for contracts and subcontracts pursuant to competitive procedures be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals or by women; with historically Black colleges and universities; or with colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

On July 11, 1994, a proposed rule to amend the DEAR to establish DOE policies and procedures for implementing Section 3021 of the Energy Policy Act was published at 59 FR 35294.

Seven sets of comments were received. Those comments have been considered and appropriate changes have been made as described in the analysis below.

B. Disposition of Comments

One commenter recommended that the proposed rule ''be rescinded and that these rules be redrawn to incorporate reforms made possible'' by the enactment of the Federal Acquisition Streamlining Act of 1994, Pub. L. 103–355. We have made alterations that will be discussed later in this preamble to the rule to reflect the Streamlining Act's effects. Generally, we have expanded the provisions of the rule designed to achieve the goals of Section 3021 by including recognition of small disadvantaged business set-asides as authorized by the Streamlining Act, the introduction of a simplified acquisition threshold, and the deletion of the ''small purchase threshold'' also provided by the Streamlining Act. Another commenter ''strongly urge[s] implementation'' of these rules. We are proceeding with the implementation of this section of the Energy Policy Act with the promulgation of this rule.

A commenter states that we have misinterpreted Section 3021 in that ''[t]he term 'no less than' does not equate with a goal but, rather, with a specific amount; a set-aside.'' A second commenter contends that Section 3021 establishes a goal, but believes that the provisions and clauses of the proposed rule were not sufficiently clear that the 10 percent is a goal and not ''a quota.'' We disagree with the first commenter in that the statutory language is ''*To the extent practicable,* the head of each agency shall provide that the obligation of *not less than 10 percent* * * *'' (emphasis added.) It is clear that the percentage sets a target that is conditioned on the circumstances of the competitive procurements. We believe that the promulgation of this final rule in its present form is the proper implementation of this statutory provision. We have reviewed each of the provisions of the solicitation provisions

and contract clauses cited by the second commenter and believe them to be clear that the 10 percent is a goal and requires their best efforts. We expect that there may be wide variation depending upon the nature of the work and the contractor involved. Some may have goals of substantially less than 10 percent and others may have goals of substantially more than 10 percent. We have made no changes in this area.

One commenter requests that we alter the definition of ''colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.'' This commenter would expand the definition ''to include universities which have a significant, 20 percent or more, Hispanic *community* within a radius of 200 miles.'' (emphasis added) The statute provides no basis for such a change.

Another commenter suggests that woman-owned businesses should be included as a separate category because ''it doesn't identify women-owned small business concerns clearly enough as a target group'' and ''it may lead to inferences that women-owned business concerns must also be small disadvantaged concerns in order to form part of a target group.'' Section 3021 describes the relevant class to be ''small business concerns controlled by socially and economically disadvantaged individuals or women.'' Woman-owned businesses are separate beneficiaries of Section 3021 and need not be socially and economically disadvantaged. We have inserted ''by'' preceding ''women'' in our implementation to bring a parallel structure and clarify the ambiguous statutory provision. One commenter requests that 926.7001(d) be deleted. They object to the order of preference of solicitation methods for awarding procurements under the Energy Policy Act, stating that the first preference should be some form of small disadvantaged business competitive procurements that would allow 8(a) firms to compete with other small disadvantaged businesses. At the time of the publication of the proposed rule, there was no authority for set-asides for small disadvantaged businesses. Section 7102 of the Federal Acquisition Streamlining Act provides for such set-asides. We have, therefore, altered that section to provide for that type of solicitation as first in the order of preference.

Two commenters have requested that we offer a more specific definition of an ''Energy Policy Act requirement'' than that in the last sentence of 926.7002. We would like to provide more specific guidance and have made attempts to; however, funds are not appropriated specifically for Energy Policy Act requirements. Our attempts during the drafting of the proposed rule have led us to conclude there are no more definitive tests worthy of publication. We have provided a list within DOE to help those who must identify these requirements, but we have made no change to the rule.

One commenter has noted that our reference to 34 CFR 602.2(a) needed to be brought up to date to reflect the Department of Education's deleting it in a rulemaking in April of 1994. In this regard, they suggest the use of 34 CFR 600.2(a). They are correct that the former provision has been deleted and that the latter is the appropriate substitution. Our original use of 34 CFR 602.2(a) was in error in any event. We have made the appropriate substitutions.

The same commenter suggests that Congress' use of ''Hispanic Americans'' and ''Native Americans'' indicates an intention that the students described be citizens of the United States. The description used would then have to be altered in the contractual provisions and clauses. The statute does not specifically require these students to be citizens of the United States and to impose such a regulatory requirement would unduly burden colleges and universities. We have made no change.

The same commenter recommends that the certification for Historically Black Colleges and Universities be deleted from the provision at 952.226–73(a)(2) and that the rule provide a list of those colleges and universities that ''would be more useful for both the Department of Energy and contractor personnel.'' We believe that there is little to be gained by such a list, since it would, at best, be merely a copy of the Department of Education list contained at 34 CFR 608.2(b) and would, on the other hand, put the Department of Energy regulations at the substantial risk of not being in conformance with the latest list of the Department of Education. We have made no change.

The same commenter suggests that the small disadvantaged business certification at 952.227–73(a)(3) be deleted as redundant of other similar certifications already existent. For the purposes of Section 3021, the contracting personnel need only look in one place. The offeror is not unreasonably burdened. We have made no change.

Finally, we have performed a review of the rule and have made the following minor changes to clarify the rule and improve its operation. We have added ''under the Energy Policy Act'' in the first sentence of 926.7001(a) to prevent any misinterpretation of the scope of this rule. We have added a recognition of set-asides in the description of competitive procedures at 926.7001(f).

We have corrected the description for use of the Energy Policy Act utilization clause for all contracts over the simplified acquisition threshold at 926.7005(b)(1)(ii) and made 926.7005(b)(2) more accurate. We have altered the phrase explaining the spaces for goals in the clause at 952.226–72(b) to reflect the basis of the percentages to be entered. We have made other typographical and minor editorial changes.

II. Procedural Requirements

A. Review Under Executive Order 12866

The Department of Energy has determined that today's regulatory action is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. This final rule will have no preemptive effect; will not have any effect on existing Federal laws; and will only clarify the existing regulations on this subject. The revised clauses apply only to contracts which would be awarded after the effective date of the final rule and, thus, have no retroactive effect. Therefore, DOE certifies that this final rule meets the requirements of Sections 2(a) and (b)(2) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This final rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, that requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

This rule will require only an insignificant addition to the data collection required for the Standard Forms 294 and 295. Accordingly, no OMB clearance is required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, and in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's final rule will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

DOE has concluded that this rule falls into a class of actions that are categorically excluded from the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331–4335, 4341–4347 (1976)) under 10 CFR Part 1021, Appendix A to Subpart D as rulemakings that are strictly procedural, such as rulemakings establishing contracting practices (Exclusion A6). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 926, 952, and 970

Government procurement.

Issued in Washington, DC, on April 28, 1995.

Richard H. Hopf,

Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set forth in the Preamble, 48 CFR Chapter 9 is amended as set forth below:

1. A new Part 926, Other Socioeconomic Programs, consisting of Subpart 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992, is added to read as set forth below:

PART 926—OTHER SOCIOECONOMIC PROGRAMS

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

Secs.
926.7001 Policy.
926.7002 Responsibilities.
926.7003 Review of the procurement request.
926.7004 Size standard for Energy Policy Act procurements.
926.7005 Preferences under the Energy Policy Act.
926.7006 Goal measurement and reporting requirements.
926.7007 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

Subpart 926.70—Implementation of Section 3021 of the Energy Policy Act of 1992

926.7001 Policy.

(a) Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) specifies that the Department of Energy shall, to the extent practicable, provide that not less than 10 percent of the total combined amounts obligated for competitively awarded contracts and subcontracts under the Energy Policy Act be expended with—

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women;

(2) Historically Black colleges and universities; or

(3) Colleges and universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans.

(b) These three groups are collectively referred to in this section as ''Energy Policy Act target groups.''

(c) Awards of Energy Policy Act procurements should be in the following descending order of preference:

(1) Competitive awards pursuant to a set-aside for small disadvantaged business;

(2) Competitive awards to small businesses owned and controlled by socially and economically disadvantaged individuals and by women for Energy Policy Act requirements under the Small Business Administration's section 8(a) program; and

(3) Competitive awards that provide an evaluation preference in accordance with 926.7006 to offerors from the Energy Policy Act target groups.

(d) The DOE implementation of Section 3021 requirements with regard to the award of subcontracts under Energy Policy Act procurements is discussed at 926.7006.

(e) Competitive procedures, for purposes of Energy Policy Act implementation, consist of awards under set-asides to small disadvantaged business and firms certified as 8(a) Small Business Administration and competitive procedures in accordance with (FAR) 48 CFR 15.6 and (DEAR) 48 CFR 915.6.

926.7002 Responsibilities.

Offices initiating procurement requests have primary responsibility to identify potential contract requirements falling within the scope of section 3021 of the Energy Policy Act. Identification shall occur at the earliest possible point in time in the acquisition cycle, but not later than the submission of the procurement request to the contracting officer. For purposes of Section 3021, a contract requirement is any award that directly satisfies an Energy Policy Act program or requirement.

926.7003 Review of the procurement request.

Any Energy Policy Act procurement, including basic research contracts with educational institutions, shall be reviewed in accordance with the Small Business/Labor Surplus Area Set-Aside and 8(a) Program Review Procedures in order to ensure that full consideration is given to the potential for making Energy Policy Act awards.

926.7004 Size standard for Energy Policy Act procurements.

The size standard for Energy Policy Act engineering services procurements (SIC 8711) shall be the size standard specified for military and aerospace equipment and military weapons.

926.7005 Preferences under the Energy Policy Act.

(a) *Prime contracts.* Solicitations for all competitive Energy Policy Act procurements not for 8(a) firms and in excess of the simplified acquisition threshold shall provide for an evaluation preference for offers received

from entities from among the Energy Policy Act target groups. The evaluation criteria shall provide that in instances in which two or more proposals being considered for final selection are ranked as essentially equal after consideration of all technical and cost evaluation factors, and if one of these proposals is from an offeror from among an Energy Policy Act target group that offeror will be selected for award.

(b) *Subcontracts.* (1) The contracting officer shall assure that all competitive Energy Policy Act solicitations over the simplified acquisition threshold contain:

(i) A solicitation provision providing for consideration of the extent to which the offerors have provided for subcontracting opportunities to entities from among the Energy Policy Act target groups; and

(ii) A clause providing for the maximum utilization of entities from among Energy Policy Act target groups in the performance of Energy Policy Act contracts.

(2) In addition, the contracting officer shall assure that all competitive Energy Policy Act procurements expected to exceed $500,000 ($1,000,000 for construction) include a clause for reporting after award as part of the Small Business and Small Disadvantaged Business Subcontracting Plan process.

926.7006 Goal measurement and reporting requirements.

(a) *General.* The following types of contract awards for Energy Policy Act procurements shall be counted toward achievement by DOE of the 10 percent goal:

(1) Any award set-aside for small disadvantaged business;

(2) Any competitive section 8(a) award;

(3) Any competitive award to one of the three target groups under an unrestricted procurement;

(4) Any award to one of the three target groups conducted under simplified acquisition procedures in excess of the micro-purchase threshold; and,

(5) Any competitively awarded subcontract to one of the three target groups under a prime award.

(b) *Prime contract awards.* Award values and dollars obligated under prime contracts and modifications to prime contracts for Energy Policy Act requirements shall be reported through the Department of Energy Procurement and Assistance Data System.

(c) *Subcontract awards.* The contractor shall be required to report, on an annual Federal Government fiscal year basis, its progress against Section 3021 goals by providing the actual dollar value of subcontract payments and the relationship of those payments to the incurred contract cost. If the contract includes reporting requirements under (FAR) 48 CFR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the Section 3021 goals shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

926.7007 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 952.226–70, Subcontracting Goals under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (Energy Policy Act), in solicitations for Energy Policy Act procurements.

(b) The contracting officer shall insert the clause at 952.226–71, Utilization of Energy Policy Act Target Entities, in contracts for the Energy Policy Act requirements with an award value in excess of the simplified acquisition threshold.

(c) The contracting officer shall insert the clause at 952.226–72, Energy Policy Act Subcontracting Goals and Reporting Requirements, in contracts for Energy Policy Act requirements with an award value in excess of $500,000 ($1,000,000 in the case of construction).

(d) The contracting officer shall insert the provision at 952.226–73, Energy Policy Act Target Group Certification, in solicitations for Energy Policy Act procurements.

(e) The contracting officer shall insert the clause at (FAR) 48 CFR 52.219–14, Limitation on Subcontracting, in contracts for Energy Policy Act requirements with an entity from among the Energy Policy Act target groups.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

3. Subpart 952.2 is amended by adding sections 952.226–70, 952.226–71, 952.226–72, and 952.226–73 to read as follows:

952.226–70 Subcontracting goals under section 3021(a) of the Energy Policy Act of 1992.

As prescribed in 926.7007(a), insert the following provision:

Subcontracting Goals Under Section 3021(a) of the Energy Policy Act of 1992 (Pub. L. 102–486) (May 1995)

(a) Definition.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the criteria of 34 CFR 600.4(a) and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined by the Secretary of Education to be Historically Black Colleges and Universities pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Section 3021 of the Energy Policy Act (Pub. L. 102–486) establishes a goal of award of 10 percent of the contract dollar value for prime and subcontract Energy Policy Act awards to Energy Policy Act target groups.

(c) The offeror, if other than one of the three groups specified in paragraph (a) of this clause, shall submit, as part of its business management proposal or, if this solicitation requires the submission of a Small Business and Small Disadvantaged Business Subcontracting Plan, then as part of that plan, unless otherwise stated in the proposal preparation instructions, individual subcontracting goals for each of the three Energy Policy Act target groups. Individual goals shall be expressed in terms of a percentage of the offeror's proposed contract dollar value. In addition, the offeror shall provide a description of the nature of the effort to be performed by each of the three groups, and, if possible, the identity of the contemplated subcontractor(s).

(d) Unless otherwise stated, such goals shall be considered in the evaluation of the Business Management Proposal as discussed in Section M of this solicitation or, if applicable, as part of the evaluation of the Small Business and Small Disadvantaged Business Subcontracting Plan.

(End of provision)

952.226–71 Utilization of Energy Policy Act target entities.

As prescribed in 926.7007(b), insert the following clause:

Utilization of Energy Policy Act Target Entities (May 1995)

(a) Definition.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a)

and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Obligation. In addition to its obligations under the clause of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the contractor, in performance of this contract, agrees to provide its best efforts to competitively award subcontracts to entities from among the Energy Policy Act target groups.

(End of clause)

952.226–72 Energy Policy Act subcontracting goals and reporting requirements.

As prescribed in 926.7007(c), insert the following clause:

Energy Policy Act Subcontracting Goals and Reporting Requirements (May 1995)

(a) Definition.—Energy Policy Act target groups, as used in this provision means:

(1) An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) Institutions of higher learning determined to be Historically Black Colleges and Universities by the Secretary of Education pursuant to 34 CFR 608.2; and

(3) Small business concerns, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that are owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) Goals. The contractor, in performance of this contract, agrees to provide its best efforts to award subcontracts to the following classes of entities:

(1) Small business concerns controlled by socially and economically disadvantaged individuals or by women: * * * percent;

(2) Historically Black colleges and universities: * * * percent;

(3) Colleges or universities having a student body in which more than 20 percent of the students are Hispanic Americans or Native Americans: * * * percent.

[* * * These goals are stated in a percentage reflecting the relationship of estimated award value of subcontracts to the value of this contract and appear elsewhere in this contract.]

(c) Reporting requirements. (1) The contractor agrees to report, on an annual Federal Government fiscal year basis, its progress against the goals by providing the actual annual dollar value of subcontract payments for the preceding 12-month period, and the relationship of those payments to the incurred contract costs for the same period. Reports submitted pursuant to this clause must be received by the contracting officer (or designee) not later than 45 days after the end of the reporting period.

(2) If the contract includes reporting requirements under FAR 52.219–9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contractor's progress against the goals stated in paragraph (b) of this clause shall be included as an addendum to Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, as applicable, for the period that corresponds to the end of the Federal Government fiscal year.

(End of clause)

952.226–73 Energy Policy Act target group certification.

As prescribed in 926.7007(d), insert the following provision:

Energy Policy Act Target Group Certification (May 1995)

(a) Certification. The offeror certifies that it is:

(1) ____An institution of higher education that meets the requirements of 34 CFR 600.4(a), and has a student enrollment that consists of at least 20 percent:

(i) Hispanic Americans, *i.e.*, students whose origins are in Mexico, Puerto Rico, Cuba, or Central or South America, or any combination thereof, or

(ii) Native Americans, *i.e.*, American Indians, Eskimos, Aleuts, and Native Hawaiians, or any combination thereof;

(2) ____An institution of higher learning determined to be a Historically Black College and University by the Secretary of Education pursuant to 34 CFR 608.2; or

(3) ____A small business concern, as defined under section 3 of the Small Business Act (15 U.S.C. 632), that is owned and controlled by individuals who are both socially and economically disadvantaged within the meaning of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or by a woman or women.

(b) By submission of an offer, the offeror agrees to provide to the Contracting Officer, upon request, evidence satisfactory to the contracting officer that the offeror is an entity from the Energy Policy Act target group identified.

(End of provision)

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS [AMENDED]

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

5. Part 970 is amended to add a new subpart 970.26, Other Socioeconomic Programs, consisting of Section 970.2601, Implementation of Section 3021 of the Energy Policy Act of 1992, to read as follows:

Subpart 970.26—Other Socioeconomic Programs

970.2601 Implementation of Section 3021 of the Energy Policy Act of 1992.

The goal requirements of Section 3021 of the Energy Policy Act of 1992, and the attendant reporting requirements shall be included in the subcontracting plan for the management and operating contract and shall apply to the annual dollar obligations specifically provided to the Management and Operating contractor for competitively awarded subcontracts that fulfill Energy Policy Act requirements. See 970.7104–12(f).

Subpart 970.71—Management and Operating Contractor Purchasing

6. Section 970.7104–12 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) as follows:

970.7104–12 Small business and small disadvantaged business concerns.

* * * * *

(f) Management and operating contractors may provide in their purchasing systems and methods for the application of preferences to Energy Policy Act target groups, taking into consideration the provisions of 926.70, Implementation of Section 3021 of the Energy Policy Act of 1992.

* * * * *

[FR Doc. 95–11167 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002, 1011, 1160, 1161, 1162 and 1163

[Ex Parte No. 55 (Sub-No. 94); Ex Parte No. 55 (Sub-No. 86)]

Revision of Application Procedures and Corresponding Regulations; Revision of Licensing Application Forms and Corresponding Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Policy statement.

SUMMARY: The Commission is announcing that it no longer will accept the ''old'' standard licensing application form, *Authority Application Form OP–1* (Approved by OMB, 3120–0047, Expires 10/1/93), and henceforth will accept only new Forms OP–1, OP–1(P), OP–1(W) and OP–1(FF) (Approved by OMB, 3120–0047, Expires 12/97). The Commission will reject applications submitted on the ''old'' form. The Commission is taking this action in order for the public and the Commission to realize the efficiencies available through use of the shorter and more accurate new forms.

In addition, the Commission is announcing that the new forms have been revised slightly to correct minor errors and to make them easier for the public to use. The ''new revised'' forms are now available from the Commission. Because no substantive revisions are involved, the Commission will continue to accept both the ''new'' forms and the ''new revised'' forms.

EFFECTIVE DATE: This policy statement is effective June 1, 1995.

FOR FURTHER INFORMATION CONTACT: Suzanne O'Malley (Office of Public Assistance) 202–927–7597. [TDD for the hearing impaired: 202–927–5721.]

SUPPLEMENTARY INFORMATION: In a decision served December 9, 1994, the Commission adopted revised regulations, as well as new forms, to implement the Trucking Industry Regulatory Reform Act (TIRRA), Title II of the Hazardous Materials Transportation Act Amendments of 1994, Pub.L. 103–311 (August 26, 1994). The revised regulations (which further streamline and simplify the licensing process and establish a new fee schedule) and the new forms became effective on January 1, 1995. The new forms have been available since then; however, as a transition measure, the Commission has continued to accept the old forms. Nevertheless, applications submitted on the old Form OP–1 have been processed under the revised licensing standards and procedures that took effect on January 1, 1995.

The old forms request a considerable amount of information that no longer is relevant to the licensing standards as revised by TIRRA. Thus, the old forms are burdensome to the public and the Commission, which now have had ample opportunity to become familiar with the revised forms and procedures.

In order for the public and the Commission to benefit fully from the efficiencies offered by the new forms, the Commission no longer will accept applications filed on the old form, and will reject them. The filing fees accompanying applications filed on old forms will be returned, along with the rejected application. In addition, the Commission will forward two copies of an appropriate new form to the sender of the rejected application.

In addition, since January 1, 1995, when the new forms began to be used, several minor technical corrections and improvements to the forms have been made. The new revised forms are available from all Commission Regional Offices and from the Commission's Office of Public Assistance in Washington, DC.

Authority: 5 U.S.C. 553 and 559; 16 U.S.C. 1456; and 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102.

Decided: May 1, 1995.

By the Commission, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11132 Filed 5–4–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 941265–4365; I.D. 041995A]

Pacific Coast Groundfish Fishery; Miscellaneous Management Measures

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

ACTION: Modification of annual specifications and management measures, and inseason adjustment of commercial trip landing and recreational bag limits.

SUMMARY: NMFS announces adjustments to the annual specifications and management measures to increase the harvest guideline for sablefish and provide conversion factors for lingcod. NMFS also announces inseason adjustments to increase the commercial trip limits for trawl-caught sablefish and yellowtail rockfish, and to reduce the recreational bag limit for rockfish off Washington State. These actions are authorized by the Pacific Coast Groundfish Fishery Management Plan which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. These actions are intended to correct an error in the calculation for the sablefish harvest guideline, enable the 1995 harvest guidelines for yellowtail rockfish and the limited entry allocation for trawl-caught sablefish to be reached, to reduce fishing effort in the recreational fishery for black rockfish off Washington State, and to accommodate traditional fishing and marketing practices in the lingcod fishery.

DATES: Effective May 1, 1995, until the effective date of the 1996 annual specifications and management measures, which will be published in the **Federal Register**. Comments will be accepted until May 17, 1995.

ADDRESSES: Comments on these actions should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Information relevant to these actions has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS (Regional Director).

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206–526–6140; or Rodney R. McInnis 310–980–4040.

SUPPLEMENTARY INFORMATION: On January 4, 1995, NMFS filed 1995 Annual Specifications and Mangement Measures for Pacific Coast Groundfish Fishery with the Office of the Federal Register (60 FR 2331–2344, January 9, 1995). At its April 1995 meeting in Portland, OR, the Pacific Fishery Management Council (Council) considered the best available scientific information, the advice of its advisory committees, and public testimony before recommending to NMFS the following actions adjusting these annual specifications and measures for implementation by May 1, 1995, the beginning of the next period for cumulative trip limits in the Pacific

groundfish commercial fishery. A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a calendar month, without a limit on the number of landings or trips.

1. *Increase of the Harvest Guideline for Sablefish*. At its October 1994 meeting, the Council recommended the annual specifications for the 1995 groundfish fishery. These specifications include the acceptable biological catch (ABC), harvest guidelines, and limited entry and open access allocations for certain species. After the specifications were announced, an error was discovered in the calculation of the sablefish harvest guideline.

At its October 1994 meeting, the Council was advised that the 1994 sablefish harvest guideline of 7,000 metric tons (mt) north of the Conception subarea (36° N. lat.) would be exceeded by 700 mt. In response, the Council reduced the 1995 harvest guideline by 700 mt, from 7,800 mt to 7,100 mt, to compensate for the 1994 overage. This projected overage subsequently was found to be incorrect due to an error in calculation. The best available information at the April 1995 Council meeting indicated that landings in 1994 were 7,274 mt, less than 4 percent above the 7,000 mt harvest guideline for sablefish north of the Conception subarea (36° N. lat.). This is within the acceptable range allowed for other species. Therefore, at its April 1995 meeting, the Council recommended that the 700–mt deduction to the 1995 harvest guideline be eliminated, increasing the harvest guideline to 7,800 mt. This increase to the harvest guideline results in proportional increases to the limited entry allocation (which includes trawl and nontrawl allocations) and to the open access allocation. The 700–mt increase to the harvest guideline results in: A 43–mt increase to the open access allocation (from 420 mt to 463 mt); a 657–mt increase to the limited entry allocation (from 5,900 mt to 6,557 mt); a 383 mt increase (58 percent) to the limited entry trawl allocation (from 3,420 mt to 3,803 mt); and a 274–mt increase (42 percent) for the limited entry nontrawl allocation (from 2,480 mt to 2,754 mt). No change is made to the tribal treaty allocation of 780 mt which was calculated before the 700–mt deduction to the harvest guideline had been made.

2. *Increase of the Limited Entry Trip Limit for Trawl-Caught Sablefish*. The best available information through March 18, 1995, projected that the trawl fishery would land 3,234 mt of sablefish in 1995, 566 mt (15 percent) below the revised 3,803–mt limited entry allocation for the trawl fishery. So that the trawl allocation could be reached, the Council recommended that the limited entry cumulative trip limit for trawl-caught sablefish be increased by about 15 percent, from 6,000 lb (2,722 kg) to 7,000 lb (3,175 kg) per vessel per month coastwide. Sablefish often are caught with thornyheads and Dover sole, which are managed together as the ''DTS complex.'' NMFS expects that increasing the trip limit will not only ensure that the trawl allocation is reached, but also will help divert effort from shortspine thornyheads, whose trip limit was reduced on April 1, 1995 (60 FR 16811, April 3, 1995). No change is made to the cumulative trip limit for the DTS complex. Also, no change is made to the nontrawl sablefish fishery, which is expected to achieve its allocation by the end of the year.

3. *Increase of the Limited Entry Trip Limits for Yellowtail Rockfish*. Yellowtail rockfish are a component of the *Sebastes* complex, which includes most species of rockfish caught off Washington, Oregon, and California. The best available information through March 18, 1995, projected the catch of yellowtail rockfish in the Vancouver, Columbia, and Eureka areas to be 4,607 mt in 1995 (3,661–mt landed catch plus 946–mt discards), 32 percent below the 6,740–mt combined harvest guideline for these areas. (The Vancouver-Eureka area is divided into northern and southern subareas at Cape Lookout, OR (45°20′15″ N. lat.), with northern and southern harvest guidelines, but projections for each subarea separately cannot be determined this early in the year.) Therefore, to allow full achievement of the harvest guidelines for yellowtail rockfish, the Council recommended that the monthly cumulative trip limits be increased by about 30 percent, from 14,000 lb (6,350 kg) to 18,000 lb (8,165 kg) north of Cape Lookout, and from 30,000 lb (13,608 kg) to 40,000 lb (18,144 kg) between Cape Lookout and Cape Mendocino (40°30′ N. lat., which is the southern boundary of the Eureka subarea). South of Cape Mendocino, there is no separate trip limit for yellowtail rockfish, which is counted toward the 100,000–lb (45,359 kg) cumulative monthly trip limit for the *Sebastes* complex (which includes yellowtail rockfish). Even though the harvest guidelines for the *Sebastes* complex were not projected to be reached, no change is made to the cumulative trip limits for the *Sebastes* complex because an increase in yellowtail landings will result in increased landings of the entire complex.

4. *Reduction of the Recreational Bag Limit for Rockfish off Washington*. At the March 1995 Council meeting in San Francisco, CA, the Council was advised that the State of Washington had recently decided to reduce its recreational bag limit for rockfish, and would be requesting the same change in Federal waters on the same date, May 1, 1995. The current Federal bag limit, which is consistent with the previous State limit, is 15 rockfish per day south of Leadbetter Point (46°38′10″ N. lat.) or 12 rockfish per day north of Leadbetter Point. The requested change is 10 rockfish per day in Federal waters off Washington State. This reduction in the bag limit is intended to reduce the harvest of rockfish (in numbers of fish) by about 10 percent, and would have the largest effect on black rockfish which generally comprise more than 75 percent of the recreational rockfish catch off Washington State.

Off Washington, black rockfish are harvested predominantly in the recreational fishery. (The commercial fishery for black rockfish off Washington already has been restricted by the regulations at 50 CFR 663.23(b)(1)(iii).) Black rockfish appear to be the only nearshore coastal species sufficiently abundant to support a recreational fishery at the current magnitude. Although there is no separate harvest guideline for black rockfish at this time and the suggested level of removal is more conservative than for most other rockfish species, the reduction in the bag limit is intended to avoid a resource conservation problem in the future, as well as to maintain reasonable concentrations of black rockfish in nearshore areas accessible to the recreational fishery. This change also would be more consistent with the bag limits for black rockfish caught off Oregon (15 rockfish per day, of which only 10 may be black rockfish). The Council concurred with the State of Washington's request, and recommended that the Federal bag limit for rockfish off Washington be reduced to 10 rockfish for consistency with state regulations.

5. *Lingcod Length and Weight Conversions*. A Federal trip limit for commercially caught lingcod was implemented for the first time in January 1995 of 20,000 lb (9,072 kg) cumulative per month. A 22–inch (56 cm, total length) size limit also was implemented for the commercial and recreational fisheries, which previously had applied only to the recreational fishery off California. After the trip and size limits were announced, it became apparent that some fishing operations had traditionally landed dressed lingcod

''headed-and-gutted.'' Other individuals asked to land lingcod eviscerated with the head left on. ''Heading'' lingcod is not allowed under the annual management measures, which prohibit retention of fish subject to a size limit if the total length cannot be determined (paragraph IV.A.(6) at 60 FR 2341, January 9, 1995). Therefore, to avoid disruption of traditional fishing and marketing practices, a length for ''headed'' lingcod is needed which corresponds to the 22–inch (56–cm) size limit. Similarly, trip limits apply to the round weight of fish, so a conversion to a round-weight equivalent is needed for lingcod that have been gutted, or headed-and-gutted, before landing.

The Council recommended that the size limit for lingcod that are ''heads-off'' be 18 inches (46 cm) based on a published scientific report by the Washington Department of Fisheries. (Washington State has adopted this size limit for lingcod that are ''heads-off''; Oregon and California have not yet adopted a size for lingcod with the head removed.) The Council also recommended that the following product recovery ratios (PRRs) for lingcod that is headed-and-gutted or only eviscerated, taken from an Alaska Sea Grant Report, be used if the State of landing has no conversion factors. (Currently, only Washington has a conversion factor for headed-and-gutted lingcod, which is the same as the conversion factor being adopted in this document.) A Product Recovery Rate (PRR) of 1.5 is used to convert the 20,000–lb (9,072 kg) round weight, cumulative trip limit for lingcod to 13,333 lb (6,048 kg) for headed and gutted lingcod. A PRR of 1.1 is used to convert the 20,000–lb (9,072 kg) round weight, cumulative trip limit to 18,183 lb (8,246 kg) for lingcod that are gutted with the heads left on.

NMFS Actions

NMFS concurs with the Council's recommendations, and, for the reasons stated above, announces the following changes to the 1995 fishery specifications and management measures published at 60 FR 2331–2344, January 9, 1995:

1. *Sablefish Harvest Guideline*. The weights (in thousands of metric tons) for sablefish in Table 1 (60 FR 2333) are revised so that: The sablefish harvest guideline for the area north of 36° N. lat. (the Vancouver, Columbia, Eureka, and Monterey statistical subareas) is increased from 7.1 to 7.8; the limited entry allocation is increased from 5.90 to 6.557; and the open access allocation is increased from 0.42 to 0.463. Also, footnote f/ to Table 1 is revised to read as follows: ''f/ The 7,800 mt sablefish harvest guideline is the 8,700 mt ABC north of the Conception subarea (north of 36° N. lat.) reduced by 900 mt for estimated discards. The 7,800–mt harvest guideline is reduced by 780 mt for the treaty tribes before dividing the remaining 7,020 mt between the limited entry (6,557 mt) and open access (463 mt) fisheries. The limited entry allocation is further allocated 58 percent to the trawl fishery (3,803 mt), and 42 percent to the nontrawl fishery (2,754 mt), both of which are harvest guidelines. (See the section on trawl and nontrawl sablefish management for 1995).'' The ''note'' under paragraph IV.E.(3)(a) (at 60 FR 2342) describing the limited entry gear allocations is revised to incorporate these new numbers.

2. *Increase to the Limited Entry Trip Limit for Trawl-Caught Sablefish*. Paragraphs IV.E.(3)(b)(ii)(A) and (B) announcing trip limits for the DTS complex (60 FR 2342), as modified for shortspine thornyheads (60 FR 16811, April 3, 1995), are revised as follows:

IV.E.(3)(b)(ii)(A) *North of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained north of Cape Mendocino is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

IV.E.(3)(b)(ii)(B) *South of Cape Mendocino*. The cumulative trip limit for the DTS complex taken and retained south of Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative limit, no more than 7,000 lb (3,175 kg) may be sablefish, and no more than 15,000 lb (6,804 kg) may be thornyheads. No more than 3,000 lb (1,361 kg) of the thornyheads may be shortspine thornyheads.

3. *Increase to the Limited Entry Trip Limits for Yellowtail Rockfish*. Paragraphs IV.C.(2)(a)(i) and (ii) announcing trip limits for the *Sebastes* complex (including bocaccio, yellowtail, and canary rockfish) (60 FR 2342) are revised as follows:

IV.C.(2)(a)(i) *North of Cape Lookout*. The cumulative trip limit for the *Sebastes* complex taken and retained north of Cape Lookout is 35,000 lb (15,876 kg) per vessel per month. Within this cumulative trip limit for the *Sebastes* complex, no more than 18,000 lb (8,165 kg) may be yellowtail rockfish taken and retained north of Cape Lookout, and no more than 6,000 lb (2,722 kg) may be canary rockfish.

IV.C.(2)(a)(ii) *Cape Lookout to Cape Mendocino*. The cumulative trip limit for the *Sebastes* complex taken and retained between Cape Lookout and Cape Mendocino is 50,000 lb (22,680 kg) per vessel per month. Within this cumulative trip limit for the *Sebastes* complex, no more than 40,000 lb (18,144 kg) may be yellowtail rockfish taken and retained between Cape Lookout and Cape Mendocino, and no more than 6,000 lb (2,722 kg) may be canary rockfish.

4. *Rockfish Recreational Bag Limit*. Paragraph IV.J.(3) announcing the recreational bag limits in Federal waters off the State of Washington (60 FR 2344) is revised as follows:

IV.J.(3) *Washington*. The bag limits for each person engaged in recreational fishing seaward of the State of Washington are: Three lingcod per day no smaller than 22 inches (56 cm) total length; and 10 rockfish per day.

5. *Size Limits*. Paragraph IV.A.(6)(60 FR 2341) is revised as follows:

IV.A.(6) *Size Limits and Length Measurement*. Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish. No fish subject to a size limit may be retained, if it is in such condition that its length has been extended or cannot be determined by these methods or by the methods in paragraphs IV.E.(3)(d) for sablefish and IV.G.(1)(a) for lingcod.

6. *Lingcod Size and Weight Conversions*. New paragraphs

IV.G.(1)(a) and (b) are added to paragraph IV.G.(1) (60 FR 2343) as follows:

IV.G.(1)(a) *Size Conversion*. For lingcod with the head removed, the minimum size limit, which corresponds to 22 inches (56 cm) total length for whole fish, is 18 inches (46 cm) measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact.

IV.G.(1)(b) *Weight Conversion*. The PRR established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The states' PRRs may differ and fishers should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.) If a state does not have a PRR for lingcod that is headed and gutted, or only gutted, the following PRRs will be used. To determine the

round weight, multiply the processed weight times the PRR.

(i) *Headed and gutted*. The PRR for headed and gutted lingcod is 1.5. Therefore, the cumulative trip limit for headed and gutted lingcod is 13,333.3 lb (6,048 kg) processed weight per vessel per month, which corresponds to 20,000 lb (9,072 kg) round weight. (The State of Washington currently uses a PRR of 1.5.)

(ii) *Gutted, with the head on*. The PRR for lingcod that has only been eviscerated is 1.1. Therefore, the cumulative trip limit for gutted lingcod is 18,182 lb (8,246 kg) processed weight per vessel per month, which corresponds to 20,000 lb (9,072 kg) round weight.

7. *Introductory Text is Added to paragraph IV.J.(60 FR 2344) to Clarify that Length Measurement is the Same in the Recreational and Commercial Fisheries*.

IV.J. *Recreational Fishery*. Length measurement for lingcod is explained at paragraphs IV.A.(6) and IV.G.(1)(a).

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Regional Director, Northwest Region, (see **ADDRESSES**) during business hours. There was an opportunity for public comment at the April Council meeting. Supporting documents were available for public inspection prior to, and at, the Council meeting. The Secretary therefore finds good cause under 5 U.S.C. 553(b)(B) to waive the requirements for publication of a general notice of proposed rulemaking. Most actions taken in this rule relieve restrictions and therefore, according to 5 U.S.C. 553(d)(1), are not subject to the 30-day delayed effectiveness requirement of the Administrative Procedure Act. The only action that does not relieve a restriction is the reduction in the rockfish bag limit off the State of Washington. This action, however, is being implemented by the State of Washington on May 1, 1995, and NMFS finds that it is necessary to have consistent state and Federal bag limits. NMFS finds that need for consistency is good cause to waive the 30-day delay in effectiveness under 5 U.S.C. 553(d)(3). This action is taken under the authority of 50 CFR 663.21(a) and 50 CFR 663.23(c)(1)(i)(C), (1)(i)(E), and (3)(B), and is exempt from review under E.O. 12866.

Dated: May 1, 1995.

Richard H. Schaefer,

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

[FR Doc. 95–11128 Filed 5–2–95; 2:44 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 042195B]

Groundfish of the Bering Sea and Aleutian Islands Area; Yellowfin Sole

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 1, 1995, until 12 noon, A.l.t., August 1, 1995.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The first seasonal bycatch allowance of Pacific halibut for the BSAI trawl yellowfin sole fishery, which is defined at § 675.21(b)(1)(iii)(B)(*1*), was established as 280 metric tons by the final 1995 initial specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(iii), that the first seasonal bycatch allowance of Pacific halibut apportioned to the trawl yellowfin sole fishery in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under 50 CFR 675.21 and is exempt from review under E.O. 12866.

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

Dated: May 1, 1995.

Richard W. Surdi,

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

[FR Doc. 95–11069 Filed 5–1–95; 4:00 pm]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 950206040–5040–01; I.D. 050195B]

Groundfish of the Bering Sea and Aleutian Islands Area; Greenland Turbot/Arrowtooth Flounder/Sablefish

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for species in the Greenland turbot/arrowtooth flounder/sablefish fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1995 Pacific halibut bycatch mortality allowance apportioned to the trawl Greenland turbot/arrowtooth flounder/sablefish fishery category in the BSAI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), May 3, 1995, until 12 midnight, A.l.t., December 31, 1995.

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

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1995 Pacific halibut bycatch mortality allowance apportioned to the trawl Greenland turbot/arrowtooth flounder/sablefish fishery category, which is defined at § 675.21(b)(1)(iii)(C), was established as 120 metric tons by the 1995 final specifications (60 FR 8479, February 14, 1995).

The Director, Alaska Region, NMFS, has determined, in accordance with

§ 675.21(c)(1)(iii), that the 1995 bycatch mortality allowance of Pacific halibut apportioned to the trawl Greenland turbot/arrowtooth flounder/sablefish fishery category in the BSAI has been caught. Therefore, NMFS is prohibiting directed fishing for aggregate species in the Greenland turbot/arrowtooth flounder/sablefish fishery category by vessels using trawl gear in the BSAI.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

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

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

Dated: May 1, 1995.

Richard W. Surdi,

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

[FR Doc. 95–11068 Filed 5–1–95; 4:00 pm]

BILLING CODE 3510–22–F

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50 CFR Part 676

[Docket No. 950223056–5109–02; I.D. 121594B]

RIN 0648–AG45

Limited Access Management of Federal Fisheries In and Off of Alaska; Improve IFQ Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule amending portions of the regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off of Alaska. This action is necessary to further refine the IFQ Program and is intended to improve the ability of NMFS to manage the halibut and sablefish fisheries.

EFFECTIVE DATE: June 1, 1995.

ADDRESSES: Copies of the final rule and the Regulatory Impact Review (RIR) for this action may be obtained from: Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907–586–7228.

SUPPLEMENTARY INFORMATION: The IFQ Program is a regulatory regime designed to promote the conservation and management of the fixed gear halibut and sablefish fisheries in and off of Alaska, and to further the objectives of the Magnuson Fishery Conservation and Management Act and the Northern Pacific Halibut Act. Further information on the implementation of this management program, and the rationale supporting it, is contained in the preamble to the final rule implementing the IFQ program published in the **Federal Register** on November 9, 1993 (58 FR 59375).

This action amends various portions of the regulations implementing the IFQ Program and is designed to make the IFQ Program more responsive to the conservation and management goals for the Nation's fishery resources. The following list gives a brief description of the regulatory provisions added or amended. Further information on these changes is contained in the preamble to the proposed rule published in the **Federal Register** on January 12, 1995 (60 FR 2935).

1. Section 676.11: (a) A definition of ''clearing officer'' is added to mean a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who is authorized to provide vessel clearances and perform other duties as described in part 676; and (b) the definition of ''trip'' is changed to clarify that a vessel operator cannot begin a new trip merely by crossing regulatory area boundaries.

2. Section 676.14(a) requires a vessel operator to provide the Alaska Region, NMFS, with the name and location of the registered buyer(s) to whom the IFQ species will be landed, the vessel identification, the estimated weight of IFQ species to be landed, the identification number(s) of the IFQ card(s) that will be used to make the landing, and the anticipated date and time of landing. This information must be reported at least 6 hours before landing IFQ species.

3. Section 676.14(b)(2) is revised to allow persons authorized by the International Pacific Halibut Commission to sample all IFQ halibut landings for biological information. Also, this revision authorizes clearing officers, authorized officers, and observers to verify, inspect, and sample all IFQ landings and landings made by those vessels, and to board vessels making IFQ landings.

4. Section 676.17(a) requires a vessel operator obtaining prelanding written clearance at a port in Alaska to provide the weight of IFQ species on board.

5. Section 676.17(a)(1) requires a vessel operator obtaining a prelanding written clearance at a port in Alaska to obtain that clearance prior to departing the waters of the exclusive economic zone (EEZ) adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

6. Section 676.17(a)(2) requires a vessel operator obtaining a prelanding written clearance at a port in a state other than Alaska to provide a departure report to NMFS, Alaska Region, prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. The departure report must include the weight of the IFQ species on board and the intended date and time the vessel will obtain prelanding vessel clearance.

7. Section 676.17(a)(9) designates geographic locations of the primary ports where a vessel operator can obtain vessel clearance from a clearing officer. These geographical locations also provide a vessel operator with notification of the approximate locations where boardings may occur if deemed necessary by a clearing officer.

8. Section 676.17(a)(3) requires a vessel operator to obtain vessel clearance from a clearing officer located at a primary port in the State of Alaska before that vessel operator lands IFQ species in a foreign port.

9. Section 676.17(a)(4) designates Port Hardy, Prince Rupert, and Vancouver, British Columbia, as the only Canadian ports where IFQ species may be landed.

10. Section 676.17(a)(5) requires a vessel operator having any IFQ species on board to land and weigh all species on board at the same time and place as the first landing of any species on board. For example, if a vessel had Pacific halibut (IFQ species), sablefish (IFQ species), and Pacific cod (non-IFQ species) on board, and the vessel operator wanted to offload the Pacific cod to a tender, the vessel operator also would be required to offload and weigh the Pacific halibut and sablefish.

11. Section 676.17(b) describes the 10 percent adjustment policy for a person who harvests or lands IFQ species in an amount greater than the amount available in the person's annual IFQ account. A person that harvests or lands an amount that is greater than the amount available in the person's annual IFQ account will have the account adjusted in the year following a determination that the account was exceeded, if the amount exceeding the account is not greater than 10 percent of the amount of IFQ available in the person's annual IFQ account at the time of landing. The adjustment would be a deduction of the amount of IFQ

harvested or landed in excess of the annual IFQ account from that account in the year following a determination that the account was exceeded. The adjustment would apply to whomever the affected IFQ is allocated in the year following a determination. The 10 percent adjustment policy, and the underage provision described below, are intended to provide persons who harvest IFQ species with a cushion around the exact amount of IFQ pounds available. NMFS anticipates that the average harvest over multiple seasons will be close to the amount available in a person's IFQ account. This adjustment policy should not be mistaken for an opportunity to routinely exceed an annual IFQ account or to exceed the account in an amount greater than that allowed under the adjustment policy. Such behavior would be subject to an enforcement action.

12. Section 676.17(c) allows the addition of IFQ underages to a person's IFQ account for the following fishing year. Underages of up to 10 percent of a person's annual IFQ account for the current fishing year would be added to that person's annual IFQ account for the following fishing year. Any amount of the underage exceeding 10 percent would expire at the end of the current fishing year.

13. Section 676.22(i)(3) clarifies that vessel category lengths for vessels using catcher vessel IFQ specified at § 676.20(a)(2) also apply to freezer vessels using catcher vessel IFQ. For example, a person may only use catcher vessel IFQ Category ''C'' on board a freezer vessel if that freezer vessel's length overall (LOA) is consistent with LOA categories in § 676.20(a)(2)(iii) and the frozen product requirements in § 676.22(i)(3).

14. Section 676.22(c)(3)(i) references the appropriate product recovery rates for sablefish (Table 1 to § 672.20) deductions made to a person's annual IFQ account.

15. Section 676.22(c)(3)(ii) provides the appropriate conversion factors for Pacific halibut deductions made to a person's annual IFQ account.

16. Section 676.24(j)(4) changes the last word in the first sentence of § 676.24(j)(4) from ''section'' to ''part.''

No public comments on the proposed action were received by NMFS.

Changes in the Final Rule From the Proposed Rule

1. The proposed definitions of ''catcher vessel'' and ''freezer vessel'' are not adopted. NMFS proposed to change the definitions of ''catcher vessel'' and ''freezer vessel'' in § 676.11 so that a freezer vessel would be a vessel that was capable of processing some or all of its catch, rather than a vessel used to process some or all of its catch. NMFS decided that this definition change was confusing and that further analysis needed to be performed before any change to these definitions were implemented.

2. Section 676.13 is not changed as proposed. Section 676.13(a)(2)(ii) would have been removed and paragraph (a)(2)(iii) would have been redesignated as paragraph (a)(2)(ii). Section 676.13(a)(2) also would have been revised to reflect this change. This change was proposed to avoid the implication that a registered buyer permit would be needed to harvest and land IFQ species at a shore-based processor located in the State of Alaska, but not located in a sablefish IFQ regulatory area. After further analysis, NMFS decided to leave the regulatory text in its original form. The phrase, ''[o]utside of an IFQ regulatory area,'' as used in § 676.13(a)(2)(ii), means any of the IFQ regulatory areas defined in § 676.11. This would eliminate the anomalous result of requiring a person who lands at a shore-based processor in the State of Alaska, but not in a sablefish regulatory area, to hold a registered buyer permit.

3. The landing notification requirements in § 676.14(a) of the final rule includes vessel identification. This requirement, like the other proposed requirements adopted in this final rule, will assist in ensuring that all IFQ landings are properly recorded. Appropriate vessel identification is the name of the vessel, or alternatively, if the vessel does not have a name, some identifying characteristics that can be used by NMFS Enforcement to recognize the vessel. The vessel identification requirement was analyzed in the RIR for the proposed rule; however, the requirement inadvertently was not included in the proposed regulatory text.

4. Section 676.14(e) is revised to clarify that each instance of transshipment must be authorized by a clearing officer. This was the original intent of the change in the proposed rule; however, the text in the proposed rule implied that only the location needed to be authorized by a clearing officer.

5. Section 676.17(b) is changed and § 676.17(b)(1) and (b)(2) are added to reflect a change from the proposed method of adjusting an annual IFQ account for IFQ species harvested in an amount greater than the amount available in the IFQ account. NMFS determined that the new method of adjustment (see explanation in number 12 of the brief descriptions of the regulation) more accurately reflected the intent of the North Pacific Fishery Management Council for adjusting the annual IFQ account. Also, NMFS determined that it was no longer necessary to include the forfeiture provision or the 400 lb (181.4 kg) exemption to the forfeiture provision in the 10 percent adjustment policy.

6. Proposed § 676.17(a) provided that vessels obtaining prelanding written clearance at a port in Alaska must obtain that clearance prior to departing waters in or adjacent to the State of Alaska. Also, it provided that vessels obtaining clearance at the port in Washington or another state must report to NMFS, Alaska Region, prior to departing waters in or adjacent to the State of Alaska. To clarify this reference, waters in, or adjacent to, the State of Alaska refers to all waters under the jurisdiction of the State of Alaska; all waters of the EEZ, as defined at 50 CFR 620.2, that is adjacent to waters under the jurisdiction of the State of Alaska; and the maritime area of the United States, as defined at 50 CFR 301.2, that is adjacent to waters under the jurisdiction of the State of Alaska. Language has been added to new § 676.17(a) (1) and (2) consistent with this interpretation.

7. Section 676.17(a)(4) is changed to clarify that IFQ landings in Canada may only occur at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia. The language in the proposed rule was vague when it referred to what could be landed (i.e., no person shall land IFQ species) and where it could be landed (i.e., in Canada at a port other than the ports of).

Classification

An RIR was prepared for this action. An analysis was included in the RIR, which described and estimated the total number of small entities affected, and which analyzed the economic impact on those small entities of the vessel clearances, Canadian port designations, and offloading requirements. It is estimated that less than 20 percent of the 7,200 vessel/owners involved in the IFQ Program will be affected by these changes, which may increase compliance costs. Based on the analysis, it was determined that this action would not have a significant economic impact on a substantial number of small entities. Copies of the RIR can be obtained from NMFS (see **ADDRESSES**).

This rule has been categorically excluded from further environmental assessment pursuant to section 6.02b.3.(b)(ii) of NAO 216–6.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. Public reporting burden for each year is estimated to average 6 minutes per response for notification of IFQ landings, 6 minutes per response for advance notification of transshipment, and 5 minutes per response for prelanding clearance. All reporting burden estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0272, for the Pacific halibut and sablefish IFQ program, and OMB Control Number 0648–0269, for the Western Alaska CDQ program.

This rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Dated: April 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 676 is amended as follows:

PART 676—LIMITED ACCESS MANAGEMENT OF FEDERAL FISHERIES IN AND OFF OF ALASKA

1. The authority citation for 50 CFR part 676 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.* and 1801 *et seq.*

2. Section 676.11 is amended by revising the definition of ''Trip'' and by adding the definition of ''Clearing officer'' to read as follows:

§ 676.11 Definitions.

* * * * *

Clearing officer means a NMFS special agent, a NMFS fishery enforcement officer, or a NMFS enforcement aide who performs the function of clearing vessels at one of the primary ports listed in § 676.17(a)(4).

* * * * *

Trip, as used in this part, means the period beginning when a vessel operator commences harvesting IFQ species and ending when the vessel operator lands any species.

* * * * *

3. Section 676.13 is amended by revising paragraphs (f)(1), and (f)(2) to read as follows:

§ 676.13 Permits.

* * * * *

(f) * * * (1) A legible copy of any IFQ permit issued under this section must be carried on board the vessel used by the permitted person to harvest IFQ halibut or IFQ sablefish at all times that such fish are retained on board. Except as specified in § 676.22(d), an individual who is issued an IFQ card must remain aboard the vessel used to harvest IFQ halibut or IFQ sablefish with that card until all such fish are landed, and must present a copy of the IFQ permit and the original IFQ card for inspection on request of any authorized officer, clearing officer, or registered buyer purchasing IFQ species.

(2) A legible copy of the registered buyer permit must be present at the location of an IFQ landing, and must be made available for inspection on request of any authorized officer or clearing officer.

* * * * *

4. Section 676.14 is amended by revising paragraphs (a), (b)(1), (b)(2), (e), and (f) to read as follows:

§ 676.14 Recordkeeping and reporting.

* * * * *

(a) *Prior notice of IFQ landings.* The operator of any vessel that makes an IFQ landing must notify the Alaska Region, NMFS, no later than 6 hours before landing IFQ halibut or IFQ sablefish, unless permission to commence an IFQ landing within 6 hours of notification is granted by a clearing officer. Such notification of IFQ landings must be made to the toll-free telephone number specified on the IFQ permit between the hours of 0600 and 2400 Alaska local time. The notification must include the name and location of the registered buyer(s) to whom the IFQ halibut or IFQ sablefish will be landed, the vessel identification, the estimated weight of the IFQ halibut or IFQ sablefish that will be landed and the identification number(s) of the IFQ card(s) that will be used to land the IFQ halibut or IFQ sablefish, and the anticipated date and time of the landing.

(b) * * *

(1) IFQ landings may be made only between the hours of 0600 and 1800 Alaska local time unless permission to land at a different time is granted in advance by a clearing officer. An IFQ landing may continue after this time period, if it was started during the period.

(2) All vessels making IFQ landings, and the landings made by those vessels, are subject to verification, inspection, and sampling by authorized officers, clearing officers, and observers. Also, all IFQ halibut landings are subject to sampling for biological information by persons authorized by the IPHC.

* * * * *

(e) *Transshipment.* No person may transship processed IFQ halibut or IFQ sablefish between vessels without authorization by a clearing officer. Authorization must be obtained for each instance of transshipment. An IFQ transshipper's request for authorization to transship must be received by a clearance officer at least 24 hours before the transshipment is intended to occur.

(f) A copy of all reports and receipts required by this section must be retained by registered buyers and be available for inspection by an authorized officer or a clearing officer for a period of 3 years.

5. Section 676.17 is amended by redesignating paragraphs (a)(1) through (a)(4) as paragraphs (a)(6) through (a)(9); by adding new paragraphs (a)(1) through (a)(5), and (c); and by revising paragraphs (a) introductory text, newly redesignated paragraph (a)(9), (b), and (c) to read as follows:

§ 676.17 Facilitation of enforcement and monitoring.

* * * * *

(a) *Vessel clearance.* Any person who makes an IFQ landing at any location other than in an IFQ regulatory area or in the State of Alaska must obtain prelanding written clearance of the vessel and provide the weight of IFQ halibut or IFQ sablefish on board to the clearing officer.

(1) Vessels obtaining prelanding written clearance at a port in the State of Alaska must obtain that clearance prior to departing the waters of the exclusive economic zone (EEZ) adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska.

(2) Vessels obtaining prelanding written clearance at a port in the State of Washington or another state must provide a departure report to NMFS, Alaska Region, prior to departing the waters of the EEZ adjacent to the jurisdictional waters of the State of Alaska, the territorial sea of the State of Alaska, or the internal waters of the State of Alaska. The departure report must include the weight of the IFQ halibut or IFQ sablefish on board and the intended date and time the vessel will obtain prelanding written clearance at the port in the State of Washington or another state.

(3) A vessel operator who lands IFQ species in a foreign port must first obtain vessel clearance from a clearing officer located at a primary port in the State of Alaska.

(4) No person shall make an IFQ landing in Canada other than at the ports of Port Hardy, Prince Rupert, or Vancouver, British Columbia.

(5) A vessel operator must land and report all IFQ species on board at the same time and place as the first landing of any species harvested during a fishing trip.

* * * * *

(9) Unless specifically authorized on a case-by-case basis, vessel clearances will be issued only by clearing officers at the following primary ports:

Port	North latitude	West longitude
Akutan	54°08′05″	165°46′20″
Bellingham	48°45′04″	122°30′02″
Cordova	60°33′00″	145°45′00″
Craig	55°28′30″	133°09′00″
Dutch Harbor/ Unalaska.	53°53′27″	166°32′05″
Excursion Inlet	58°25′00″	135°26′30″
Homer	59°38′40″	151°33′00″
Ketchikan	55°20′30″	131°38′45″
King Cove	55°03′20″	162°19′00″
Kodiak	57°47′20″	152°24′10″
Pelican	57°57′30″	136°13′30″
Petersburg	56°48′10″	132°58′00″
St. Paul	57°07′20″	170°16′30″
Sand Point	55°20′15″	160°30′00″
Seward	60°06′30″	149°26′30″
Sitka	57°03′	135°20′
Yakutat	59°33′	139°44′

(b) *Ten Percent Adjustment Policy.* A person's annual IFQ account will be adjusted in the year following a determination that the person harvested or landed IFQ species in an amount greater than the amount available in the person's annual IFQ account and if the amount greater than the amount available does not exceed 10 percent of the amount available in the person's annual IFQ account at the time of landing. The adjustment would be a deduction of the amount of IFQ species harvested or landed that was determined to exceed the amount available in the person's annual IFQ account, and will apply to any person to whom the affected IFQ is allocated in the year following a determination.

(c) *Underages.* Underages of up to 10 percent of a person's total annual IFQ account for a current fishing year will be added to that person's annual IFQ account in the year following determination of the underage. This adjustment to the annual IFQ allocation will be specific to IFQ species, IFQ regulatory area, and vessel category for which an IFQ is calculated, and will apply to any person to whom the affected IFQ is allocated in the year following determination of an underage.

6. Section 676.22 is amended by adding paragraphs (c)(3)(i) and (c)(3)(ii), and by revising paragraph (i)(3) to read as follows:

§ 676.22 Limitations on the use of QS and IFQ.

* * * * *

(c) * * *

(3) * * *

(i) The amount of sablefish to be reported to NMFS for debit from an IFQ account will be the round-weight equivalent determined by dividing the initial accurate scale weight of the sablefish product obtained at time of landing by the standard product recovery rates for sablefish in Table 1 to § 672.20 of this chapter.

(ii) The amount of halibut to be reported to NMFS for debit from an IFQ account will be the gutted, head-off weight determined by multiplying the initial accurate scale weight of the halibut obtained at the time of landing by the following conversion factors:

Product code	Product description	Conversion factor
01	Whole fish	0.75
04	Gutted, head on	0.90
05	Gutted, head off	1.00

* * * * *

(i) * * *

(3) Catcher vessel IFQ may be used on a freezer vessel, provided that the length of the freezer vessel using the catcher vessel IFQ is consistent with the vessel category of the catcher vessel IFQ, as specified at § 676.20(a)(2)(ii) through (iv), and no frozen or otherwise processed fish products are on board at any time during a fishing trip on which catcher vessel IFQ is being used. A vessel using catcher vessel IFQ may not land any IFQ species as frozen or otherwise processed product. Processing of fish on the same vessel that harvested those fish using catcher vessel IFQ is prohibited.

* * * * *

7. Section 676.24 is amended by revising paragraph (j)(4) to read as follows:

§ 676.24 Western Alaska Community Development Quota Program.

* * * * *

(j) * * *

(4) No person may alter, erase, or mutilate a CDQ permit, card, registered buyer permit, or any valid and current permit or document issued under this part. Any such permit, card, or document that has been intentionally altered, erased, or mutilated will be invalid.

* * * * *

[FR Doc. 95–11070 Filed 5–2–95; 9:12 am]

BILLING CODE 3510–22–W

Proposed Rules

Federal Register
Vol. 60, No. 87
Friday, May 5, 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

Food Safety and Inspection Service

9 CFR Parts 308, 310, 318, 320, 325, 326, 327 and 381

[Docket No. 95–013N]

Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems—Notice of Public Hearing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public hearing.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public hearing to accept oral comments from the public in response to FSIS's February 3, 1995, proposal titled ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) System''.

DATES: May 30–31, 1995.

ADDRESSES: Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kenneth Elane, Director, Quality Services Staff, or Dan Vitiello, Director, Planning and Coordination Unit, Planning Office, Policy, Evaluation and Planning Staff, Food Safety and Inspection Service, USDA, (202) 501–7136.

SUPPLEMENTARY INFORMATION: On February 3, 1995, FSIS published a proposed rule ''Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems'' (60 FR 6774). In that document, the Agency proposed a number of regulatory changes applicable to Federal- and State-inspected meat and poultry establishments. The proposed changes are designed to reduce the occurrence and numbers of pathogenic microorganisms in meat and poultry products, thereby reducing the incidence of foodborne illness associated with the consumption of these products.

On February 27, 1995, FSIS announced a series of outreach activities to assist the public in understanding the proposed rule and in providing comments on the proposed rule. In that notice, FSIS announced its intention to hold a two-day public hearing for those commenters who wish to submit oral comments.

This notice announces the hearing which will be held on May 30–31, 1995, from 8 a.m. to 5 p.m. each day. The hearing will be held at the Georgetown University Conference Center, 3800 Reservoir Road, Washington, DC. The hearing will be conducted as follows:

Those persons wishing to present oral comments and/or address the panel should contact the Planning Office at (202) 501–7136 as soon as possible to reserve a time slot. Speaking times will be scheduled on a first-come basis as calls are received by the Planning Office. (Speakers will be scheduled for the morning or afternoon of the first day and the morning and part of the afternoon of the second day.)

A panel consisting of Michael R. Taylor, Administrator, FSIS, Thomas Billy, Associate Administrator, FSIS, Robert Buchanan, Deputy Administrator, Science and Technology, FSIS, and Glenn Morris, Director, Epidemiology and Emergency Response Program, FSIS, will accept oral comments from the public. Presentation of oral comments will begin after brief opening remarks by one or more of the panelists. Oral comments will be limited to 10 minutes per commenter (7 minutes for the comment; 2–3 minutes for questions and followup by the panelists.) The last 2 hours of the second day will be devoted to additional comments from attendees. Interested persons will have 5 minutes to address the panel.

Oral comments may also be provided to FSIS by contacting the persons listed in the proposed rule. Written comments should be directed to the FSIS Docket Clerk at the address given in the proposed rule.

Done at Washington, DC, on: April 27, 1995.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 95–11043 Filed 5–4–95; 8:45 am]

BILLING CODE 3410–DM–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans—Microloans

AGENCY: Small Business Administration (SBA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 7(m) of the Small Business Act (15 U.S.C. 636(m)) (Act) authorizes the SBA to operate a microloan demonstration program. Under this program, the SBA lends funds to qualified intermediaries which re-lend amounts of $25,000 or less to eligible small business concerns. Under this proposed rule, an intermediary would be allowed to operate across State lines with the written approval of the SBA Associate Administrator for Financial Assistance if that person makes a determination that it would be in the best interest of the small business community to allow such intermediary to operate in more than one State.

DATES: Comments may be submitted on or before June 5, 1995.

ADDRESSES: Comments may be mailed to John R. Cox, Associate Administrator for Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: John R. Cox, 202/205–6490.

SUPPLEMENTARY INFORMATION: Section 7(m) of the Act authorizes the SBA to undertake a microloan demonstration program in which the SBA lends funds to authorized intermediaries which re-lend amounts up through $25,000 to eligible small business concerns.

At the present time, section 122.61–11(a) of SBA's regulations (13 CFR 122.61–11(a)) provides that ''* * * no intermediary may undertake Program activities in more than one State.'' Since section 7(m) of the Act does not prohibit a microloan intermediary from conducting its operations in more than one State, SBA believes that the present regulatory provision is too broad. Circumstances may occur when it would be in the best interest of a small business community to authorize a microloan intermediary to operate across State lines, and this proposed regulation would allow the SBA Associate Administrator for Financial Assistance to make a determination in that regard.

Compliance With Executive Orders 12612, 12778 and 12866, the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., and the Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA certifies that this proposed rule, if promulgated in final form, will not have a significant economic impact on a substantial number of small entities.

The SBA certifies that this proposed rule, if promulgated in final form, will not constitute a significant regulatory action for the purposes of Executive Order 12866, since the proposed change is not likely to result in an annual effect on the economy of $100 million or more.

The SBA certifies that the proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

The SBA certifies that this proposed rule would not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Further, for purposes of Executive Order 12778, SBA certifies that this proposed rule, if promulgated in final form, is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

(Catalog of Federal Domestic Assistance Program No. 59.012)

List of Subjects in 13 CFR Part 122

Loan programs—business, Small businesses.

Accordingly, pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend part 122, chapter I, title 13, Code of Federal Regulations, as follows:

PART 122—BUSINESS LOANS

1. The authority citation for part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a), 636(m).

2. Section 122.61–11(a) would be amended by revising the last sentence to read as follows:

§ 122.61–11 Program procedure.

(a) *Participation of intermediary by State.* * * * Further, no intermediary may undertake Program activities in more than one State unless the SBA Associate Administrator for Financial Assistance determines in writing that it would be in the best interest of the small business community to operate across State lines.

* * * * *

Dated: March 31, 1995.

Philip Lader,

Administrator.

[FR Doc. 95–11156 Filed 5–4–95; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 12, 102, 134 and 177

[RIN 1515–AB19; RIN 1515–AB34]

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement; Rules of Origin Applicable to Imported Merchandise

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the interim Customs Regulations, published in the **Federal Register** on January 3, 1994, as T.D. 94–4, which established the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement. This document also republishes, with some modifications, proposed amendments to the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise, which were also published in the **Federal Register** on January 3, 1994. The purpose of the proposals set forth in this document is to clarify the intent, or otherwise facilitate understanding of, the previously-published interim and proposed regulatory amendments. In addition, this document solicits public comments on the appropriate effective date for a final rule action regarding the interim and proposed regulatory amendments.

DATES: Comments must be received on or before June 19, 1995.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, N.W., Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Sandra Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On January 3, 1994, Customs published T.D. 94–4 in the **Federal Register** (59 FR 110) setting forth interim regulations to establish rules for determining the country of origin of a good for purposes of Annex 311 of the North American Free Trade Agreement (NAFTA). The United States, Canada and Mexico entered into the NAFTA on December 17, 1992, and the provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. T.D. 94–4 stated that the interim regulations were effective on January 1, 1994, and also provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 11, 1994 (59 FR 11547). On February 3, 1994, a notice was published in the **Federal Register** (59 FR 5082) setting forth corrections to the interim regulations contained in T.D. 94–4.

On January 3, 1994, Customs also published a document in the **Federal Register** (59 FR 141) which proposed to amend the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise; this notice of proposed rulemaking represented a refinement and replacement of an earlier proposal published in the **Federal Register** on September 25, 1991 (56 FR 48448). This January 3, 1994, document proposed: (1) To amend § 102.0 of the interim regulations published as T.D. 94–4 so that those interim regulations would apply not only for the purposes stated in Annex 311 of the NAFTA but would also apply in the broader context of country of origin determinations ''for purposes of the Customs and related laws and the navigation laws of the United States''; and (2) to amend various provisions within Parts 4, 10, 12, 134 and 177 of the Customs Regulations (19 CFR Parts 4, 10, 12, 134 and 177) to ensure that the rules contained in interim Part 102 would control wherever language requiring a country of origin determination appears in those other regulatory provisions. Thus, under this notice of proposed rulemaking the interim rules set forth in T.D. 94–4 would apply wherever a provision of the Customs and related laws or the

navigation laws or a regulation thereunder uses language such as ''new and different article of commerce'', ''wholly the growth, product, or manufacture'', ''product of'', or ''substantial transformation'' for purposes of establishing the criteria for country of origin of a good. The notice of proposed rulemaking provided for a 90-day public comment period which was subsequently extended to July 5, 1994, by a notice published in the **Federal Register** on March 10, 1994 (59 FR 11225).

In view of the fact that the January 3, 1994, notice of proposed rulemaking presented the same regulatory scheme as the rules contained in T.D. 94–4, each document referred to the other and stated that public comments submitted in response to either document would be considered in connection with the review of both documents. The notice of proposed rulemaking further indicated that the background section and interim Part 102 regulatory texts set forth in T.D. 94–4 were applicable to it. Thus, it was intended that the two documents be read together so that, following public notice and comment procedures, one final rule document could be derived from the interim and proposed rule documents, consistent with the overall goal of promulgating uniform rules of origin for Customs and related purposes.

The publication of the interim regulations set forth in T.D. 94–4 was specifically intended to fulfill the United States obligation under paragraph 1 of NAFTA Annex 311 which provides that the parties to the NAFTA shall establish, by January 1, 1994, rules (referred to as ''Marking Rules'') for determining whether a good is a good of a party (that is, whether the country of origin of a good is either the United States, Canada or Mexico) for purposes of the following NAFTA Annexes: (1) Annex 311 (Country of Origin Marking); (2) Annex 300–B (Textile and Apparel Goods); and (3) Annex 302.2 (Tariff Elimination). T.D. 94–4 set forth these interim ''Marking Rules'' as a new Part 102 of the Customs Regulations (19 CFR Part 102), entitled ''Rules of Origin'', and also set forth consequential conforming interim amendments to existing sections within Parts 12 and 134 of the Customs Regulations (19 CFR Parts 12 and 134).

Interim Part 102 consists of §§ 102.0–102.20 and, following § 102.0 (Scope), is divided into two subparts. Subpart A is entitled ''General'' and consists of § 102.1 (Definitions), and Subpart B is entitled ''Rules of Origin'' and consists of §§ 102.11 through 102.20. Section 102.11 sets forth the general rules for determining the country of origin of a good and consists of paragraphs (a) through (d) which are applied in a hierarchical and sequential manner. Thus, reference must be had first to paragraph (a) which provides that the country of origin of a good is: under subparagraph (1), the country in which the good is wholly obtained or produced; under subparagraph (2), the country in which the good is produced exclusively from domestic materials; or, under subparagraph (3), the country in which each foreign material incorporated in the good undergoes an applicable change in tariff classification set out in § 102.20 and/or satisfies any other applicable requirements contained in that section or elsewhere in Part 102. If the country of origin cannot be determined under paragraph (a) because the good does not meet the terms of subparagraph (1), (2) or (3), then resort must be had to paragraph (b) and, if that fails, then to paragraph (c) and, if that fails, finally to paragraph (d). Sections 102.12–102.19 set forth additional rules that serve to interpret, clarify, limit or otherwise control the application of the general rules contained in § 102.11 as well as the specific rules contained in § 102.20. Section 102.20 contains the specific change in tariff classification rules and/or related requirements referred to in the country of origin rule set forth in § 102.11(a)(3); the rules in § 102.20 are set forth for each Harmonized Tariff Schedule of the United States (HTSUS) chapter, and the applicable rule is determined by the HTSUS tariff classification that is applicable to the finished good at the time the country of origin determination is being made.

Based on a review of the comments received in response to the interim and proposed rule documents published in the **Federal Register** on January 3, 1994, and as a result of independent review of the interim and proposed texts within Customs, it has been determined (1) that some clarification and further explanation of the intent behind the proposed uniform rule concept should be provided and (2) that some changes should be made to the interim and proposed texts and that those changes should be the subject of public notice and comment procedures before proceeding to the final rule stage in this matter; the interim texts as published in T.D. 94–4 (and as subsequently corrected) remain in effect pending completion of such final rule action. In addition, Customs believes, for the reasons set forth below, that public comments should be solicited at this time regarding the appropriate use of a delayed effective date for any final rule that results from the interim and proposed rules, including any changes thereto as proposed in this document.

Accordingly, this document (1) provides supplemental background information regarding the proposed uniform rule concept, (2) sets forth proposals, as discussed in detail below, to amend the interim regulatory texts contained in T.D. 94–4 published at 59 FR 110 and corrected at 59 FR 5082, (3) republishes all of the proposed regulatory amendments published at 59 FR 141 on January 3, 1994, with certain changes thereto as discussed in detail below, and (4) invites public comments on the appropriate effective date for a final rule on this matter. It is the intention of Customs to address in this document only those comments submitted in response to the January 3, 1994, notices that involve substantive changes to the interim or proposed texts requiring further public comment procedures; other such previously submitted comments will be addressed in an appropriate final rule or other document to be published at a later date. Comments will be accepted and considered in response to this document only in regard to the following: (1) The proposed changes to the interim regulatory texts as discussed and set forth below; (2) all other proposed regulatory amendments as discussed and set forth below which represent a substantive change to the proposals published on January 3, 1994; and (3) the final rule delayed effective date issue. Accordingly, comments which concern other issues involved in the January 3, 1994, documents, or which do not otherwise relate to the new proposals set forth in this document, will not be accepted and considered by Customs. For purposes of this document, the background sections of the January 3, 1994, interim and proposed rule documents are applicable except where otherwise required by a change set forth in this document.

Supplemental Background Information

Based on an apparent misunderstanding reflected in some of the comments received in response to the January 3, 1994, notice of proposed rulemaking, Customs believes that further clarification of the purpose of the development of these rules for all non-preference country of origin purposes is needed. This misunderstanding most probably stemmed from the following statement made in the Background portion of that document: ''The change in tariff classification standard was specifically developed as an alternative to the traditional substantial transformation

rule in order to obviate the problems described above.'' This statement referred only to the distinction *in format* between the proposed rulemaking, which defines substantial transformation on the basis of published rules, and the traditional application of the substantial transformation principle. Customs was not proposing that the criteria for origin determination be based on a new standard; quite to the contrary, Customs intended that the same standard, substantial transformation, be applicable. As stated in the Discussion of Proposals portion of the January 3, 1994, notice of proposed rulemaking, the new Part 102 rules, which are proposed to be used for all non-preference country of origin determinations, are specifically intended to ''codify'', rather than constitute an alternative to the substantial transformation rule, i.e., ''the criteria for determining whether a good has become a 'new and different article of commerce' as a result of a manufacturing process in a given country,'' and to ''provide the results that would be reached under the case-by-case application of the substantial transformation rule.''

The interim Part 102 rules, which Customs proposes to use for all non-preference country of origin determinations, are in fact specifically designed to implement the principles of the substantial transformation standard. In this regard, it should be noted that Customs views as relevant all court decisions involving substantial transformation for purposes of country of origin determination, regardless of the purpose for which the origin determination is being made. As favorably noted by the Court of International Trade in *Target Sportswear, Inc.* v. *United States,* Slip Op. 95–7 (January 23, 1995), the purpose of these rules is ''to add more certainty and uniformity to the substantial transformation test.'' A summary of court decisions involving substantial transformation for country of origin purposes and their relationship to the interim Part 102 rules is set forth below in order to demonstrate the approach which Customs took in drafting the interim and proposed rules at issue, including the further proposals set forth in this document.

1. Country of Origin Marking Cases

With regard to country of origin marking, the area in which the substantial transformation principle is employed most often, the Part 102 rules will implement this principle consistent with court decisions in this area.

U.S. v. *Gibson-Thomsen Co., Inc.,* 27 CCPA 267 (1970). The court held that the manufacturer of hair and tooth brushes from imported wood blocks and toothbrush handles was the ''ultimate purchaser'' by having manufactured the imported articles into new articles having a new name, character, and use. In this case, wooden toothbrush handles and brush blocks were imported for use in the manufacture of tooth and hair brushes. In the manufacture of the brushes, holes were bored into the handles and blocks; bristles were inserted and imbedded; the bristles were trimmed; and the handles were polished and stamped. In the opinion of the court, the imported wood blocks and handles lost their identities in a tariff sense as a result of the assembly process and became an integral part of a new article. Therefore, the court held that the imported articles were substantially transformed in the United States so that country of origin marking of the hair and tooth brushes was not required. The Part 102 rules are consistent with this case since the § 102.20 specific tariff shift rule for hairbrushes and toothbrushes allows a change to heading 9603 from any other heading, and the components which make up the finished toothbrushes and hairbrushes (handles, brush blocks, bristles) are all classified outside heading 9603.

National Juice Products Assn. v. *U.S.,* 628 F.Supp. 978 (CIT 1986). In this case the court upheld Customs' determination that production of frozen concentrated and reconstituted orange juice from manufacturing concentrate is not a substantial transformation. The court also upheld Customs' determination that the manufacturing concentrate imparts the essential character to the juice and makes it orange juice. The court noted that the addition of water, orange essences, and oils to the concentrate, while making it suitable for retail sale, does not change the fundamental character of the product, which is still essentially the product of juices. The court concluded that the orange juice processors in the United States are not the ultimate purchasers of the imported product because consumers are the last purchasers to receive the product in essentially the form in which it is imported. Thus, in accordance with 19 U.S.C. 1304, the court held that the retail packaging must indicate the country of origin of the manufacturing concentrate. The Part 102 rule which covers reconstituted orange juice (and which specifies a change to subheading 2009.11 through 2009.30 from any other chapter) is consistent with National Juice. Thus, just as the court in National Juice found that the process of mixing various ingredients with foreign manufacturing concentrate to create reconstituted orange juice did not result in a substantial transformation, the applicable Part 102 rule likewise does not allow origin to be conferred by a change from manufacturing concentrate to reconstituted orange juice.

Uniroyal, Inc. v. *U.S.,* 542 F.Supp. 1026 (CIT 1983). In Indonesia, an upper was manufactured from sheets of leather into a substantially complete shoe, that is, it was ''lasted'' or permanently molded so that it was in its ultimate shape, form, and size when exported. The uppers were shipped to the United States where pre-shaped, pre-sized outsoles were attached to the uppers. The court held that despite the name change (upper to shoe) there was no substantial transformation because the attachment of the outsole to the upper was a minor manufacturing or combining process which left the identity of the upper intact. The upper when imported was readily recognizable as a distinct item apart from the outsole to which it was attached. The court found that the imported upper was the very ''essence'' of the finished shoe. Therefore, the court held that the operations performed in the United States did not constitute a substantial transformation and therefore the uppers were required to be marked with the country of origin. The Part 102 standard is consistent with the court's holding in Uniroyal because the specific tariff shift rule for shoes (headings 6401–6405) provides for a change to heading 6401 through 6405 from any tariff item outside that group except from formed uppers.

Koru North America v. *U.S.,* 701 F.Supp. 229 (CIT 1988). In this case, Hoki fish caught off the coast of New Zealand were beheaded, de-tailed, eviscerated, and frozen aboard the ships in New Zealand. The fish were then sent to Korea for further processing which included thawing, skinning, boning, trimming, glazing, refreezing, and packaging the fish for shipment to the United States. The court held that the processing in Korea constitutes a substantial transformation. The court based this finding on a change in name and character, noting that there was a name change from ''headed and gutted Hoki'' to ''individually quick-frozen fillets'' as a result of the processing performed in Korea. The court also noted that the two types of fish are classified in separate tariff provisions. The court also found that the processing in Korea resulted in a change in the fundamental nature and character of the

fresh fish. The court noted that the fillets are considered discrete commercial goods and are sold in separate areas and markets different from the headed and gutted fish. Therefore, the court held that the Hoki should be properly marked as products of Korea. The Part 102 rules are consistent with this court decision since the rule for frozen fish fillets (heading 0304) allows a change to frozen fish fillets of heading 0304 from any other heading, and frozen, beheaded, detailed, eviscerated fish are classified in heading 0303 rather than in heading 0304.

MBI Merchandise Industries Inc. v. *United States,* 16 CIT 495 (1992). The court held that any Korean magnetic pages of a photo album were substantially transformed in Taiwan and in the People's Republic of China when they were incorporated into the finished photo album. The court noted that the character of the pages was transformed from refills into a fully salable photo album (classifiable in heading 4820). The court also stated that the use of the pages was also transformed from loose refill pages to completed albums suitable for display on a customer's bookshelf, the primary purpose of a photo album. Finally, the court found that the combination of the various parts (cover, pages, binder, and label) results in an item having a new identity. Distinguishing the Uniroyal case discussed above, the court found that the pages in this case were not the ''essence'' of the photo albums. The court also considered the value added as a result of making the photo albums as support for the conclusion that the photo album pages were substantially transformed. The permitted changes under the applicable Part 102 tariff shift rule include a change to heading 4820 from any other heading, and the loose filler paper is classified outside of heading 4820. Thus, under the Part 102 rules the magnetic pages will be transformed into products of the country in which the albums were produced, consistent with the conclusion reached by the court in M.B.I.

Carlson Furniture Industries v. *United States,* 65 Cust.Ct. 474 (1970). In the United States, wooden chair parts imported from Japan were assembled and fitted together, glued, the joints steel-pinned, the legs cut to length and leveled, and, in some instances, the chairs upholstered and the legs fitted with glides and casters. The court held that the work performed on the imported articles by the importer was substantial in nature and more than the mere assembly of parts together. The court further stated that the result of the assembly of the chair parts was the transformation of the parts into a ''functional whole''—which resulted in a new and different article of commerce. The court concluded that the importer was the ''ultimate purchaser'' of the imported articles, so that the marking of the country of origin on the containers in which such articles were imported was deemed sufficient to meet the statutory marking requirements. The Part 102 rules are consistent with this court decision. In this case, the goods for which country of origin had to be determined were ''chairs'', which are classified under subheadings 9401.10 through 9401.80 for which the following § 102.20 tariff shift rule is prescribed: A change to subheading 9401.10 through 9401.80 from any subheading outside that group, except from subheading 9403.10 through 9403.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a). The Court in Carlson Furniture also found that the imported articles were ''not chairs in unassembled or knocked-down condition'', but were ''at best the wooden parts which go into the making of chairs''. Since the chair parts were assembled into finished chairs by the U.S. importer, the change in classification from the imported chair parts to finished chairs did not occur pursuant to GRI (2)(a). Consequently, the assembly and other processing of the chair parts, classifiable under 9401.90, would be treated as a substantial transformation under the Part 102 rules.

Midwood Industries, Inc. v. *United States,* 313 F.Supp. 951 (Cust.Ct. 1970). In this case, steel forgings manufactured in West Germany, England, or Italy were imported into the United States where they were manufactured into flanges and fittings. The purpose of the fittings was to connect pipes of matching sizes. To that end, the forgings were faced, bored, threaded or bevelled, drilled, or spot-faced, or they were heated and one end was reduced in size and diameter by compression, excess steel was removed, and the ends were aligned, trimmed, and bevelled for welding purposes. In finding that the steel forgings were substantially transformed in the United States, the court drew a distinction between consumer and producer goods, stating that the imported articles are ''not in fact used by the consumer in such state of manufacture and are not capable of use by the consumer in that state.'' The Part 102 rules do not stipulate that all forgings manufactured into flanges and fittings undergo a substantial transformation. The Court of International Trade has not employed the consumer-good-versus-producer-good analysis used by the Customs Court in Midwood. Nor does Customs believe that the court is bound to follow that reasoning. *Cf. Algoma Steel Corp., Ltd.* v. *U.S.,* 865 F.2d 240, 243 (Fed.Cir. 1989). In Midwood, the Customs Court based its decision on an analysis of the facts presented regarding the manufacturing processes employed by a single pipe fittings company *circa* 1970 as well as the legal arguments presented in that case. The court noted that it did not need ''to determine whether or not the processes employed'' at the plaintiff's plant were ''generally prevalent throughout any segment of the industry in the United States.'' Midwood, 313 F.Supp. at 956. Customs believes that the *Midwood* result would have been consistent with the proposed rules set forth in this document had it been presented as such. Consequently, Customs is confident that the Court of International Trade will sustain the uniform rules of general applicability contained herein, which are relevant to current industry practices and are entirely consistent with the general principles enunciated by the court.

National Hand Tool Corp. v. *United States,* 16 CIT 308 (1992). The articles involved in this case were nine kinds of components of hand tools which were further processed and assembled in the United States. The components were either cold-formed or hot-forged in Taiwan into their final shape before importation. Some of the tools underwent a heat treatment, were reshaped by bending, or were further machined by knurling in the United States, and other articles were electroplated in the United States. The various components were then assembled in the United States to produce the finished tools. The court found that there was no name change and that the character of the imported articles remained unchanged after heat treatment, electroplating, and assembly. The court stated that although there may be changes in the characteristics of the material, they did not change the character of the articles. The court also found no change in use as a result of the processing in United States. Finally, the court found that there was no reason to find a substantial transformation on the basis of the value-added in the United States. Accordingly, since the operations performed in the United States did not result in a substantial transformation, the court held that the imported articles must be marked to indicate the country of origin pursuant to 19 U.S.C. 1304. The Part 102 rules are

totally consistent with the application of the substantial transformation principle in this case, not only in the case of hand tools but also as applied to other products involving similar processing operations.

2. Subheading 9802.00.80 and Products of the United States

This document sets forth, without change, the proposal contained in the January 3, 1994, notice of proposed rulemaking to amend § 10.14 of the Customs Regulations to provide for application of the Part 102 rules for purposes of determining when imported foreign materials are substantially transformed in the United States so as to be considered products of the United States and thus not subject to duty under subheading 9802.00.80, HTSUS, when exported for assembly abroad and then returned to the United States. The Part 102 rules are totally consistent with the following court decision which involved substantial transformation for purposes of determining country of origin in connection with item 807.00, TSUS (the predecessor to subheading 9802.00.80, HTSUS).

Data General Corporation v. *United States,* 4 CIT 182 (1982). The court considered the question of whether programming a programmable read only memory (PROM) imported into the United States constitutes a substantial transformation. The court analyzed the processing in terms of the name, character, and use test. The court found that there was a change in name in that a PROM when programmed is no longer a PROM and is sometimes referred to as a read only memory (ROM). The court found that there was also a change in character as a result of the programming which changed the pattern of interconnections with the PROM. According to the court, a distinct physical change was effected in the PROM by the opening or closing of the fuses. Citing Uniroyal, the court stated that the ''essence'' of the article, its pattern of interconnections or stored memory, was established by the programming. The court also noted that there was a change in use in that the PROM had no function or use except for programming. The court analogized programming a PROM to assembling the components on a printed circuit board, which is cited in 19 CFR 10.14(b) as an example of substantial transformation. Therefore, the court held that programming the PROM resulted in a substantial transformation into a ''fabricated component'' which was a product of the United States for purposes of item 807.00, TSUS. The result reached in this case is reflected in the Part 102 rules since the applicable tariff shift rule (subheadings 8541–8542) allows a change to any programmed chips from any unprogrammed.

3. Application of Most-Favored-Nation Duty Rates

The Part 102 rules are consistent with the court's application of the substantial transformation principle in the following case which involved the question of whether the most favored-nation duty rate (as opposed to the higher column 2 duty rate) should be applied to the imported merchandise at issue.

Coastal States Marketing, Inc. v. *United States,* 646 F. Supp. 255 (CIT 1986). The court held that mixing gas oil from the Soviet Union and fuel oil from Italy in Italy does not result in a new and different article of commerce so that the mixture becomes a product of Italy. The court concluded that there was no change in the appearance, character, identity, or use of the Russian oil to warrant the conclusion that the imported blend was solely a product of Italy. Furthermore, the court stated that the essential character of the Russian component as a fuel oil used primarily for heating remained unchanged. The court found that ''although a change in tariff classification is certainly not controlling * * * the *same* classification treatment of the products * * * is some indication that the imported blend was not a new and different product.'' Accordingly, the Part 102 rules do not allow a change of origin when fuel oil and gas oil, both of which are classified in heading 2710, are simply blended together.

4. Voluntary Restraint Arrangement Cases

On balance, and as explained below, the Part 102 rules are consistent with the following cases involving substantial transformation for purposes of determining origin in the trade policy area. These cases involved voluntary restraint arrangements that the United States had with various countries regarding the exportation of steel products to the United States.

Ferrostaal Metals Corporation v. *U.S.,* 664 F.Supp. 535 (CIT 1987). In New Zealand, full hard cold rolled steel sheet imported from Japan was annealed and galvanized by a process known as ''continuous hot-dip galvanizing'' to produce galvanized steel sheet. The court held that the hot-dipped galvanized steel sheet was a new and different article of commerce when compared to the full hard cold rolled steel sheet. In making this determination, the court found that the processing of the hard cold rolled steel sheet into hot-dipped galvanized steel sheet results in a change in name, character, and use. The court noted the change in name, that is, from full hard cold rolled steel sheet to continuous hot-dip galvanized steel sheet. The court also stated that the annealing and galvanizing process resulted in a change in character by significantly altering the mechanical properties and chemical composition of the steel. In addition, the court noted that cold-rolled steel cannot be used for the same purposes as steel that has undergone the hot-dip galvanizing process. The Ferrostaal opinion represents a trial court's resolution of a single, particular dispute involving a specific product and process. The case was not appealed. While the Court of International Trade's substantial transformation analysis in Ferrostaal remains relevant, Customs has not codified the specific result of Ferrostaal and does not propose it as a uniform rule of general applicability based on a comprehensive review of industry practices. Again, Customs believes that the Ferrostaal court would have reached the result contained in those rules had they been presented as such to the court. Moreover, Customs is confident that the Court of International Trade will sustain those rules based on an industry-wide analysis, notwithstanding the result that was reached based on the particular facts of a single case. *Cf. Algoma Steel Corp., Ltd.* v. *U.S.,* 865 F.2d 240, 243 (Fed.Cir. 1989).

Superior Wire v. *United States,* 867 F.2d 1409 (CAFC 1989). The Court of Appeals for the Federal Circuit affirmed the Court of International Trade decision that the process of drawing wire in Canada from wire rod produced in Spain is not a substantial transformation. The lower court had employed the traditional name, character, and use test, finding that, although there is a name change from wire rod to wire, there is no change in character or use when wire rod is drawn into wire. Therefore, the court held that wire drawn in Canada from Spanish wire rod was not substantially transformed for purposes of determining the country of origin under the voluntary restraint arrangement between the United States and Spain, thus resulting in Spain remaining the country of origin of the imported steel. The Part 102 rules are consistent with the court's application of the substantial transformation principle in this case: the specific § 102.20 tariff shift rule applicable to such goods provides for a change to heading 7223 (wire) from any

other heading, except from heading 7221 through 7222 (wire rod).

5. Generalized System of Preferences Cases

Although the Generalized System of Preferences (GSP) statute currently requires that the imported article must be product of a designated beneficiary developing country (BDC) in order to be eligible for GSP duty-free treatment, all of the court decisions to date involved Customs entries pre-dating that statutory provision and thus focused only on the GSP statutory preference standard that 35 percent of the value consist of materials the product of a BDC plus direct costs of processing performed in the BDC. These cases remain relevant as examples of substantial transformation analysis to the extent that the question addressed by the court did not involve the origin of the final product exported from the BDC but rather involved whether a material imported into the BDC was substantially transformed into a new and different intermediate article of commerce in the BDC before being used to make the good exported from the BDC, so that its value could be counted toward the 35 percent requirement. Although the court in each of the cases discussed below did not specifically address the issue of the origin of the final article exported to the United States, it appears both that all of the involved goods as exported to the United States were products of the BDC and that the same conclusion would be reached under the Part 102 rules.

Texas Instruments v. *U.S.*, 681 F.2d 778 (CCPA 1982). The court held that silicon chips, wire and lead strips, which were imported into a BDC where they were assembled into integrated circuits and photodiodes, and where the chips had first to be severed from silicon slices prior to the assembly process, were substantially transformed into ''materials produced in the BDC'' which were then used in the production of electronic camera parts exported to the United States.

Azteca Milling Co. v. *U.S.*, 703 F.Supp. 949 (CIT 1988), and *F.F. Zuniga Refractarios Monterrey*, 996 F.2d 1203 (CAFC 1992). These GSP cases involved the issue of whether there existed a new and different article of commerce versus ''materials in process advancing toward the finished product''. In Azteca Milling which involved corn flour imported into the United States, the court found that the production of corn flour nixtamal and masa from imported corn did not result in a substantial transformation into new and different articles of commerce, since the nixtamal and masa were ''clearly recognizable as processed corn.'' Similarly, the court in *Zuniga* found that the production of a casting slip for kiln furniture from imported dry materials did not result in a substantial transformation into new and different articles of commerce since the casting slip was only a ''transitional stage of a material in process, advancing toward the finished product'', the kiln furniture. The casting slip, like the nixtamal and masa in Azteca, was not found by the court to be ''readily susceptible of trade''.

Torrington v. *United States*, 764 F.2d 1563 (CAFC 1985). The court held that the production of swage needle blanks from imported wire and the further production of sewing machine needles from swage blanks represented a double substantial transformation of the imported wire. The Part 102 rules support the trial court's first finding of a substantial transformation—the transformation of wire into unfinished sewing machine needles—but not the second finding regarding the transformation from unfinished to finished needles. The appellate court's decision upholding the second substantial transformation found by the trial court was based on a rare citation of the producer good-consumer good standard of Midwood, which the courts have not favored. Moreover, the court's decision appears to have been influenced heavily by its desire to effectuate what it believed to be the intent of Congress. In sustaining the trial court's finding of double substantial transformation, the court noted the Congressional intent behind the GSP statute, which was to foster industrialization of BDCs, and focused on the ''actual manufacturing process by which the intermediate article becomes the final product''. In this regard, the court concluded that in light of the significant manufacturing process, there was not a ''mere pass-through'' operation in the BDC.

6. Textile Cases

The court decisions involving substantial transformation of textiles and textile products were superseded by the rules of origin established under § 12.130 of the Customs Regulations (19 CFR 12.130) for textiles and textile products subject to the U.S. textile import program. The authority to promulgate these rules was upheld by the court in *Mast Industries* v. *Regan*, 596 F.Supp. 1597 (CIT 1984). In that case, the court found that the promulgation of § 12.130, which was at the direction of the President and which set forth rules for the determination of country of origin for textiles and textile products subject to import quotas, was fully in accordance with law. See also *Target Sportswear, Inc.* v. *United States, supra*. This document republishes the January 3, 1994, proposals to delete paragraphs (d) and (e) from § 12.130 and to amend paragraph (b) thereof to cross-refer to the Part 102 rules as Customs in T.D. 90–17 made those § 12.130 rules generally applicable for textiles and textile products. Thus, the Part 102 rules track the principles of, as well as the origin results that would be reached under, § 12.130 in the case of textiles and textile products.

Proposed Changes to the Interim and Proposed Texts and Proposed Delayed Effective Date

A. Proposed Amendments to the Interim Rules

1. Part 102 General Origin Criteria

Section 102.11—General Rules

It is proposed to revise paragraph (d) of interim § 102.11 in part to simplify the text but principally in order to ensure that paragraph (d) will provide for an origin determination in all cases in which origin cannot be determined under paragraph (a), (b) or (c). Customs notes that the interim paragraph (d) text in some cases will not effectuate an origin determination when the good in question last undergoes production in a country where only minor processing was performed with respect to that good. For example, various furniture parts classifiable under subheading 9403.90, HTSUS, enter Country A from various countries; in Country A, the parts are collected and packaged into unassembled boxes of desks and tables classifiable under subheading 9403.30, HTSUS, pursuant to GRI 2(a) which are then shipped to Country B. The interim § 102.20 tariff shift rule for goods classified in subheading 9403.30 provides for ''a change to subheading 9403.10 thorugh 9403.80 from any subheading outside that group, except from subheading 9401.10 through 9401.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a).'' In the stated example this tariff shift rule will not be met because the change in classification indeed does occur as a result of classification of the collection of furniture parts as the unassembled desks and tables pursuant to GRI 2(a); thus, origin cannot be determined under interim § 102.11(a)(3). If no single component can be found to impart the essential character to the desks and tables, then origin of the goods also cannot be determined under interim § 102.11 (b). Moreover, since the desks

and tables are not classified as sets, mixtures or composite goods under the HTSUS, origin cannot be determined under interim § 102.11(c). Finally, since the parts came into Country A from various countries and only minor processing (packaging) was performed in Country A to make the goods, the origin of the goods cannot be determined under interim § 102.11(d)(1) or (2). Thus, no determination of origin can be achieved under the interim texts with regard to the good described in this example.

In order to address the problem outlined above, the proposed revision of paragraph (d) as set forth below incorporates the following three subparagraphs: subparagraph (1) covers a good produced only as a result of minor processing and provides in such a case that the country of origin of the good is the country or countries of origin of each single material that merits equal consideration for determining the essential character of the good; subparagraph (2) covers a good produced by simple assembly, where the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, and provides in such a case that the country of origin of the good is the country of origin of those parts; and subparagraph (3) covers cases in which the country of origin of a good cannot be determined under paragraph (d)(1) or (d)(2) and provides that in such cases the country of origin of the good is the last country in which the good underwent production.

Removal of § 102.14—Goods Returned

Based on comments received and as a result of further internal review, Customs has reconsidered the position stated in T.D. 94–4 that U.S. Note 2(a), Subchapter II, Chapter 98, HTSUS, has application for general country of origin purposes. In light of this change in position, it is proposed to remove this section (see also the proposed revision of interim § 102.19 discussed below).

Removal of § 102.16—Good and its Parts; Parts of Parts

It is proposed to remove interim § 102.16 which sets forth special origin rules where, for any of several specified reasons, a part of a good or a part of a part does not undergo an applicable change in tariff classification provided for in § 102.20. The experience of Customs in administering the interim NAFTA Marking Rules has shown that the hierarchical application of §§ 102.11 (b) through (d), coupled with the proposed change to § 102.11(d) discussed above, yield an appropriate origin result that codifies the substantial transformation principle. Accordingly, Customs no longer believes that § 102.16 is necessary.

Section 102.17—Non-qualifying Operations

It is proposed to revise the introductory text of interim § 102.17 to clarify the intent that the section applies whenever the change in tariff classification or other condition specified in § 102.20 was met only as a result of one or more of the listed non-qualifying operations having been performed with respect to the good.

In addition, it is proposed to revise paragraph (e) of interim § 102.17 which specifies, as a ''non-qualifying operation'' for purposes of section 102.20, any process or work the sole object of which is demonstrated by a preponderance of evidence to be the circumvention of the Part 102 rules. Upon reconsideration of this provision, it is Customs view that this provision is not administrable since the text does not make clear how it is possible for a person to ''circumvent'' these rules. First, if the § 102.20 rule or any other Part 102 rule does not preclude a specific operation from being the means by which a foreign material satisfies a § 102.20 rule, any operation is deemed allowable under Part 102. Second, if a Part 102 rule specifically precludes a type of operation (for example, ''simple assembly'' or ''dismantling or disassembly'') and it was only as a result of such an operation that the change in tariff classification requirement or other conditions specified for the foreign material under the § 102.20 rule were met, the § 102.20 rule is simply not deemed to have been satisfied. In either case, there could not have been a ''circumvention'' of the rules as a result of the operation, since either the Part 102 rules permitted the operation or, as a result of the operation, the Part 102 rules were not satisfied.

Nevertheless, to further protect against circumstances which may appear to be a ''circumvention'' of the spirit or intent of the Part 102 rules, Customs proposes to redraft paragraph (e) of § 102.17 to specify, as an additional ''non-qualifying operation'', collecting parts that, as such, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation (GRI) 2(a), without any additional operation other than minor processing. Thus, no specified change in tariff classification will be deemed to have occurred if such change resulted solely from the act of collecting parts which are then classified under the tariff provision applicable to the assembled good. If, on the other hand, in addition to the collecting of parts, processing constituting more than minor processing also occurred in the country in question, this rule would be inapplicable.

Section 102.18—Rules of Interpretation

It is proposed to revise paragraph (a) of interim § 102.18 in order to: (1) Simplify, and thus clarify the application of, the introductory text; (2) remove subparagraph (a)(1)(i) which refers to the collection of parts classified as an assembled good and thus would become redundant because it would be encompassed within the broader terms of proposed new § 102.17(e) as discussed above (which would apply to all tariff shift rules rather than to only those rules that specifically cite classification under GRI 2(a) as a basis for not allowing a specified change in tariff classification); (3) remove paragraph (a)(2) which would no longer be needed in view of the proposed removal of paragraph (a)(1)(i) from this section; and (4) simplify the remaining portion of paragraph (a) (subparagraph (a)(1)(ii) in the interim text) and remove therefrom the unnecessary reference to ''a subassembly''.

In addition, it is proposed to revise paragraph (b) of interim § 102.18 in order to effect the following changes: (1) The removal of the undefined parenthetical reference to ''self-produced materials'' in interim subparagraph (b)(2); (2) the reversal of the order of interim subparagraphs (b)(1) and (b)(2); (3) in newly designated subparagraph (b)(1), the addition of new subparagraphs (b)(1)(i) and (b)(1)(ii) to clarify and illustrate, by way of a statement and an example in each case, the intended operation of the subparagraph (b)(1) rule; and (4) the simplification, and thus clarification, of the paragraph (b) text.

Section 102.19—NAFTA Preference Override

It is proposed to make some editorial modifications to the text of interim § 102.19, to designate that text as paragraph (a), and to add a new paragraph (b). New paragraph (b) is intended to facilitate the application of the appropriate NAFTA preferential duty rate under General Note 12(a), HTSUS, in the case of originating goods the origin of which is determined to be the United States under the Part 102 provisions. It should be noted that the term ''Customs duty'' used in this new paragraph (b) is intended to include merchandise processing fees which are treated as Customs duties under

§ 24.23(e) of the Customs Regulations (19 CFR 24.23(e)).

2. Section 102.20 Specific Rules

Customs proposes to make a number of amendments to the tariff shift rules and other requirements set forth in interim § 102.20. These proposed amendments, and the reasons therefor, are summarized below with reference to the HTSUS provisions and general types of goods involved.

Elimination of the Specific Rules Referring to ''Substantial Transformation''

Customs proposes to amend the tariff shift rules for headings/subheadings 1901.90, 2103.90, 4823.20 through 4823.59, 4823.70 through 4823.90, 6811.90, 6812.90, 6814.90, 7010 through 7018, 7019.90, 7020, 8708.99, 9110, 9401.90, 9403.90, and 9606.21 through 9606.29, by eliminating in each case the rule which permits a specified change ''if that change results in a substantial transformation.'' In administering the interim Part 102 rules Customs has determined that these specific statements in the rules are redundant and do not need to be included in § 102.20 in order to codify the substantial transformation principle. As a result of this proposal and the proposed removal of § 102.16 discussed above, the term ''substantial transformation'' would no longer appear in the Part 102 texts; accordingly, it is also proposed to remove the definition of ''substantial transformation'' in interim § 102.1(p).

Section II Note

It is proposed to amend the Note under Section II by adding the words ''or from whole plants,'' after the words ''slips or other live parts of plants,''. This proposed change is intended to clarify, consistent with the definition of ''a good wholly obtained or produced'' in interim § 102.1(g), that when an agricultural product is grown and harvested from a plant that was transplanted from another country, the product has its origin in the country in which the product was harvested.

Headings 0904–0910 (Spices)

It is proposed to delete the second tariff shift rule for headings 0904–0910, which provides for a change to crushed, ground, or powdered products of heading 0904 through 0910 (principally spice products) from within Chapter 9, if put up for retail sale. Customs is of the opinion that processing raw spices to create crushed, ground or powdered spices, whether or not accompanied by cleaning, merely changes the form of the spice and does not result in any significant change in the name, character or use of the product. This view is consistent with previous Customs rulings which have held that the processing of raw cheese into grated cheese packed for retail sale does not constitute a substantial transformation.

Subheading 1517.90 (Vegetable Oils Consisting of Preparations and Mixtures)

The interim rule requires a change from any other chapter. It is proposed to amend this rule by adding a second tariff shift rule which would allow a change from any other heading so long as the resulting product contains no more than 60 percent by volume of a single oil ingredient from a single country. This change would make the rule for mixtures of different types of oils consistent with the rule for a similar type of product, mixtures of different types of fruit juices (heading 2009.90), and would incorporate the results reached under the traditional application of the substantial transformation rule with respect to such types of products.

Headings 4104–4107 (Leather)

Based both on a comment and on further review by Customs, it is proposed to delete the second tariff shift rule which allows a change to finished leather of heading 4104 through 4107 from wet blue hides or leather. This proposed change reflects the following considerations: (1) There is no established definition of the term ''finished leather'' and, in fact, the meaning of the term can vary according to the end use of the goods; and (2) the processes necessary to change wet blues to finished leather can vary and may not, in all cases, result in a change in the country of origin, as reflected in rulings issued by Customs.

New Chapter 42 Note

It is proposed to add a Note to the Chapter 42 rules to ensure that a single country of origin always will be identifiable in the case of textile goods. This new Note is modeled on Note 3 to the Section XI rules and thus also reflects the proposed amendment to that Note as discussed below.

Headings 4810–4814 (Coated Paper)

Customs proposes to revise this interim tariff shift rule by dividing it into separate rules for heading 4810, subheading 4811.10 through 4811.31, subheading 4811.39, subheading 4811.40 through 4811.90, and headings 4812 through 4814. Of these five proposed new rules, only the proposed rule for subheading 4811.39 would constitute a substantive change from the current interim rule for headings 4810 through 4814. The proposed rule for subheading 4811.39 would disallow a change from paper of heading 4804 to paper that is only ''coated, impregnated or covered with plastics''. This is consistent with Customs rulings which generally have held that laminating, coating or encapsulating does not result in a substantial transformation.

Subheadings 4823.70–4823.90 (Other Paper, Paperboard, etc. Products)

It is proposed to amend the tariff shift rule which would remain (if the ''substantial transformation'' rule is eliminated as proposed above) to specify a change ''from any other subheading, including another subheading within that group'' rather than a change ''from any other chapter''. This amendment would result in a more liberal rule which reflects the conclusions reached by Customs under the traditional approach.

Section XI (Textiles)

The proposed amendments to the interim § 102.20 specific rules applicable to textiles as discussed below are intended to conform the rules in question to the practice of, and positions taken by, Customs in the case-by-case administration of § 12.130 of the Customs Regulations (19 CFR 12.130):

a. Note (1)d

In response to a comment, it is proposed to replace the word ''body'' by the words ''major parts'' and to delete the words ''together with its sleeves and/or legs'', in order to preclude interpretation of this Note as not applying to garments that have padding in the body and linings in the sleeves.

b. New Note (1)f

It is proposed to add a new Note (1)f to clarify the meaning of ''minor embellishments'' (see the proposed amendment to the specific rules applicable to goods of headings 6302 and 6304 as discussed below).

c. Note 3

It is proposed to amend Note 3 by adding a sentence at the end to cover a case where more than one component determines classification or where the component that determines classification is attributable to more than one country. This new sentence provides that in such cases the country of origin shall be the last country in which the good underwent production other than minor processing. Customs believes that this amendment is

necessary for purposes of administration of the U.S. textile import program which makes no provision for multiple countries of origin.

d. Heading 5105 (Wool Tops)

It is proposed to add a second tariff shift rule for headings 5101–5105 in order to reflect the Customs position that the processing of greasy wool into combed wool is a substantial transformation.

e. Heading 5609 (Articles of Yarn)

It is proposed to amend the tariff shift rule for heading 5609 to include, in the exception language, a reference covering headings 5604 and 5605 which include different types of yarns. This proposed change would reflect the Customs view that the assembly or other processing of such yarns into articles classifiable in heading 5609 does not constitute a substantial transformation.

f. Heading 5804 (Net Fabrics)

Customs has determined that, under certain circumstances, it is commercially feasible to convert made up nets of heading 5608 to netting of subheading 5804.10 by simple cutting, and Customs does not believe that such a tariff shift should confer origin. Accordingly, it is proposed to divide the interim heading 5804 tariff shift rules into two sets of rules, one for subheading 5804.10 and the other for the remainder of the heading, in order to add in the case of subheading 5804.10 an exception involving a change to that subheading from heading 5608.

g. Subheadings 5806.10–5806.39 (Narrow Fabrics)

It is proposed to amend the first tariff shift rule for subheadings 5806.10–5806.39 by adding heading 5801 to the listed exceptions. Heading 5801 provides for woven pile and chenille fabrics, and it is the position of Customs that the processing of those fabrics into goods classifiable in subheadings 5806.10–5806.39 does not constitute a substantial transformation.

h. Heading 5810 (Embroidered Fabric)

In response to several similar comments, it is proposed to rearrange, and revise the wording of, the two tariff shift rules for goods of this heading in order to conform to prior rulings regarding the weight and effect of the embroidery.

i. Heading 5903 (Coated Fabrics)

It is proposed to amend the first tariff shift rule for this heading by replacing the exclusion reference to subheadings ''5806.31 through 5806.39'' by a reference to heading ''5806''. This will have the principal effect of widening the reference to include woven pile fabrics which were inadvertently omitted from the exclusion language in this tariff shift rule.

j. Headings 6101, 6102, 6201 and 6202 (Assembled Garments)

In response to a comment, it is proposed to amend the third tariff shift rule for each of these headings in order to conform the wording to that used in other § 102.20 rules which specify a change ''to assembled garments from unassembled parts''.

k. Subheadings 6103.21–6103.29, 6104.21–6104.29, 6203.21–6203.29 and 6204–21–6204.29 (Ensembles)

In response to a comment, it is proposed to add to each of these subheadings two new tariff shift rules in order to make the rules for suits (see, for example, the interim rules for subheadings 6103.11–6103.19) applicable to sets of garments (ensembles) that are essentially the same as suits.

l. Headings 6115–6117 and 6213–6214 (Shawls, Scarves, and the Like and Handkerchiefs)

In response to a comment, it is proposed to divide the interim tariff shift rule for headings 6115–6117 in order to set forth a separate rule for subheading 6117.10 which would allow a change from greige fabric to shawls, scarves, etc. by means of dyeing, printing, cutting and stitching. The proposed separate rules set forth in this document for headings 6115–6116 and for subheadings 6117.20–6117.90 reflect the terms of the interim rule.

In response to the same commenter, it is proposed to amend the interim rule for headings 6213–6214: (1) to remove the knit-to-shape proviso which does not appear to be appropriate for the type of goods covered; and (2) to add a second tariff shift rule for the same reason stated above for subheading 6117.10.

m. Heading 6205 (Shirts)

In response to a comment, it is proposed to delete the word ''shoulder'' before ''yokes'' in the second and third tariff shift rules because (1) yokes on shirts by definition are only in the shoulder area and (2) this would conform the wording to the terminology used in the rules under headings 6105, 6106 and 6206.

n. Headings 6302 and 6304 (Bed Linen and Other Furnishings)

In response to a comment, it is proposed for each of these headings to add a second tariff shift rule to the interim paragraph (1) rule to reflect current Customs rulings. The proviso in each new rule, which requires at least cutting ''finished fabric'' on all sides and hemming ''all cut edges'' and ''at least one other subsequent process'', clarifies the fact that fabric finishing operations are not considered and eliminates any uncertainty regarding the minimum amount of hemming that must be performed. The present view of Customs is that such minor embellishments should not be considered.

o. Heading 6303 (Curtains, Blinds and Valences)

In the second tariff shift rule, it is proposed to amend the proviso as follows: (1) to require ''more than'' (rather than ''at least'') cutting on all sides ''and'' hemming the cut edges; (2) by removing the requirement for ''a significant sewing or assembly operation''; and (3) by adding at the end the words ''and with no consideration being given to minor processing''. Customs believes that the ''minor processing'' standard, which is defined in § 102.1(m), is preferable to the undefined ''significant'' standard; thus, processing which is other than ''minor'' should, by definition, be considered significant.

In addition, it is proposed to amend the third tariff shift rule by adding a reference to heading 5811 so as to include quilted fabrics in the listed exceptions since a good may contain a small amount of quilted fabric without being considered a ''quilted article''.

p. Subheadings 6306.91–6306.99 (Awnings, Sunblinds and Camping Goods)

It is proposed to amend this tariff shift rule by adding language at the end of the proviso to clarify that minor processing may not be considered in determining whether the proviso conditions have been met.

q. Subheading 6307.90 (Made up Articles)

Customs believes that the interim tariff shift rule should be amended to prescribe that the sewing or assembly operation be ''substantial'' in amount rather than simply ''significant''. While this proposed amendment appears to be minor and does not materially alleviate the subjectivity of the rule, Customs notes that it: (1) effectively changes the test for manufacturing or processing

operations from a qualitative standard to a quantitative standard, which is how Customs has been applying § 12.130; and (2) conforms the terminology used in the rule to the wording of § 12.130.

New Chapter 65 Note

It is proposed to add a Note to the Chapter 65 rules to ensure that a single country of origin always will be identifiable in the case of textile goods. As in the case of the new Note proposed for the Chapter 42 rules as discussed above, this new Note is modeled on Note 3 to the Section XI rules and thus reflects the proposed amendment to that Section XI Note as discussed above.

Headings 7010–7018 (Glass Articles)

With particular regard to lead crystal stemware of heading 7013, a commenter argued that the interim rules for headings 7010–7018 represent an abandonment of existing principles used for determining country of origin and such action would significantly harm its client's business. This commenter cited, as an example of an existing principle, Headquarters Ruling Letter (HRL) 734387 dated June 8, 1992, in which Customs held that the processing in Ireland of uncut lead crystal stemware ''blanks'' originating in various continental European countries ''substantially transformed'' the ''blanks'' into ''formal crystal stemware'', thus making Ireland the country of origin of the finished product.

Customs on a number of occasions has previously ruled on the question of whether extensive and intricate cutting of crystal constituted a substantial transformation. In HRL 734387 mentioned by the commenter, Customs ruled that crystal glassware ''blanks'' were substantially transformed into formal, elegant stemware suitable for indoor decoration by the extensive hand-cutting operations performed in Ireland. Customs based this determination on the fact that the hand-cutting operation was a substantial and intricate processing operation performed by highly skilled craftsmen which significantly changed the appearance and the shape of the stemware, imparting a decorative use to the glassware. Customs also noted that the glassware lost its identity as mere glassware and became a new article bought primarily for its appearance rather than for its utilitarian use. Similarly, in HRL 734283 dated June 16, 1992, Customs found that a crystal blank bowl, vase and basket were substantially transformed as a result of extensive and intricate hand-cutting done in Ireland. In another ruling, HRL 734653 dated October 22, 1992, Customs found that crystal blank bowls, which were hand-cut in the United States, were substantially transformed by the extensive operations performed there.

Most recently, Customs held in HRL 735310 dated April 6, 1994, that hand-cutting and acid polishing crystal stemware blanks in the United States resulted in a substantial transformation of the blanks. Customs found in this case that the hand-cutting and polishing operations were extensive and intricate and were performed entirely in a single country, the United States.

The foregoing cases are to be distinguished from HRL 731617 dated September 1, 1989, in which Customs held that the grinding and polishing of aluminum trays and bowls in Mexico did not substantially transform the articles. Customs held that neither the grinding nor the polishing changed the fundamental character or use of the articles. Rather, Customs concluded that it was the constituent material, aluminum alloy, coupled with the shape and design of the articles created by the U.S. sandcasting process, that imparted the essential character to the finished articles and determined their ultimate use.

Customs, however, also concluded that in certain cases the operation of cutting stemware did not result in a substantial transformation. One such case was HRL 733036 dated April 9, 1990, in which Customs found that there was no change in name, character or use caused by the simple hand cuts made to the glass in East Germany which, although attractive, did not increase the value of the stemware.

The case-by-case application of the substantial transformation standard in this area has been very controversial over the years. Therefore, in order to allow the results that would be achieved under the case-by-case approach while promoting objectivity and predictability of origin determinations involving these articles, Customs is proposing in this document to amend the interim rules prescribed for headings 7010–7018 to include a new rule that specifies a change from uncut and unpolished glassware blanks of heading 7013 to cut and polished glassware of that heading, provided that there has been a substantial amount of both cutting and polishing operations in a single country. As an example, Customs would consider the goods covered by HRL 735310, discussed above, as meeting this proposed new standard.

Also, upon further review of these rules, Customs has discovered that the specific rule applicable to goods classified in heading 7011, which covers glass envelopes and parts thereof for electrical lamps, cathode-ray tubes or similar items, does not reflect Customs position regarding substantial transformation. This rule allows changes from glass profiles, classified in subheading 7003.30. In HRL 557387 dated October 1, 1993, Customs ruled that glass face plates for cathode ray tubes, classified in subheading 7011.20, which were produced in Mexico from Korean-origin glass profiles classified in subheading 7003.30, had not been substantially transformed into a product of Mexico. Customs concluded that ''the essential form, shape and character of the glass product [the face plates] were determined by the manufacturing operation in Korea'' for the production of the profiles. Since Customs continues to maintain the position stated in HRL 557387, it is proposed to modify the interim § 102.20 specific rules to disallow a change to heading 7011 from subheading 7003.30.

Finally, Customs has reconsidered the necessity for that provision contained in the interim rules for headings 7010 through 7018 which precludes a tariff shift from heading 7020. Customs believes that in order for such a change in tariff classification to occur, there would have to be either (1) a genuine creation of a new and different article having a new name, character or use, or (2) a tariff classification change resulting solely from a non-qualifying operation, such as a ''change in end use'' or ''dismantling or disassembly'', which pursuant to § 102.17 would not confer origin. Since the Part 102 rules already accomplish the purpose behind the limitation regarding a shift from heading 7020, it is proposed to remove that limitation. In addition, it is proposed to modify the interim rules to specifically allow a change from another heading within the group, because the same principles would apply in such a case.

Accordingly, in order to reflect the above considerations, it is proposed to replace the interim rules for headings 7010–7018 with a new structure involving one rule for heading 7010, one rule for heading 7011, and two rules for headings 7012–7018.

Subheadings 8301.10–8301.50 (Padlocks, Locks, Clasps and Frames)

It is proposed to amend the tariff shift rule for these subheadings in order to rectify the incorrect reference ''8301.40'' which should read ''8301.50'' so as to correspond to the subheadings covered in the ''HTSUS'' column.

Section XVI—Note

This note, which disallows tariff changes within Chapters 84 and 85 occurring only as a result of the application of GRI 2(a), would no longer appear necessary since the proposed amendment to interim § 102.17(e), as discussed above, would accomplish the same purpose. Accordingly, it is proposed to delete this note.

Subheading 8401.20 (Machinery and Apparatus for Isotopic Separation)

It is proposed to modify the text of the interim tariff shift rule, and to add a second tariff shift rule, in order to clarify that no change is allowed from parts of subheading 8401.20 to parts of the same subheading. Thus, under the proposed new standard for subheading 8401.20, a change from parts of subheading 8401.20 is allowed only if the change is to completed machinery and apparatus of that subheading.

Subheading 8415.90 (Parts of Air Conditioning Machines)

The interim rule allows a change to this subheading ''from any other heading, except a change resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to this subheading ''from any other subheading, except when the change is from heading 7411, 7608, 8414, 8501, and 8535 through 8537 as a result of merely a simple assembly.'' Under this proposed change, the simple assembly limitation is specified only with reference to headings from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Subheadings 8470.10–8471.91 (Calculating, Accounting and ADP Machines)

The interim rule allows a change to these subheadings ''from any other subheading, except when resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to these subheadings either ''from any subheading outside that group, except from heading 8473'' or ''from any subheading within that group or from heading 8473, provided the change is not the result of merely a simple assembly.'' Under this proposed change, the simple assembly limitation is specified only with reference to that heading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o). Thus, under the proposed rule, changes would be allowed to subheading 8470.10 through 8471.91 from any subheading outside that group, except heading 8473.

Subheadings 8471.92–8472.90 (Other Machines for Transcribing or Processing Coded Data and Other Office Machines)

The interim rule allows a change to these subheadings ''from any other subheading, except when resulting from a simple assembly.'' It is proposed to revise this rule in the same manner, and for the same reasons, as stated above for subheadings 8470.10–8471.91.

Heading 8473 (Parts and Accessories of Machines of Headings 8469–8472)

The interim tariff shift rule provides for a change to this heading ''from any other heading, except heading 8501, when resulting from a simple assembly.'' Upon a further review, Customs has identified other provisions from which a change to heading 8473 could possibly result merely from a simple assembly as defined in § 102.1(o). Therefore, it is proposed to revise this rule to allow a change to this heading ''from any other heading, except when the change is from heading 8414, 8501, 8504, 8534, 8541, or 8542 as a result of merely a simple assembly.''

Subheadings 8474.10–8474.80 (Machinery for Sorting, Grinding, etc.)

The interim rule allows a change to these subheadings ''from any other subheading, except when resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to these subheadings either ''from any subheading outside that group, except heading 8501'' or ''from a subheading within that group or heading 8501, provided the change is not the result of a simple assembly.'' Under this proposed change the simple assembly limitation is specified only with reference to those tariff provisions from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o), in consideration of the fact that the machinery in this group is very similar and frequently consists of little more than a motor with some form of attachment.

Subheadings 8482.10–8482.80 (Bearings)

A commenter cited HRL 083455 dated September 6, 1989, which held that the assembly of a tapered roller bearing was a simple assembly that did not result in a substantial transformation; therefore, the country of origin was held to be Romania where the cup and cone were manufactured. This commenter noted that although the second tariff shift rule under subheadings 8482.10–8482.80 is not a total departure from this ruling since the rule provides for bearings with domestic inner and outer races, nevertheless, this tariff shift rule is inconsistent with the ruling insofar as it allows for assemblies of parts which incorporate only domestic balls/rollers. Another commenter asserted that the rollers or balls represent a small percentage of the value (5 to 10 percent of the cost of production) and cited a finding by the Commission of the European Communities that the process or operations which result in the manufacture of balls or rollers or needle bearings and cages are of minor importance compared with the manufacture of the inner and outer rings and may be disregarded for the purposes of defining the origin of roller bearings.

In light of both the imputed minimal value of the balls/rollers and the fact that the above-cited ruling held that the cup and cone provide the essential character of the bearing, it is proposed to amend the second tariff shift rule for goods of subheadings 8482.10–8482.80 to not allow origin to be based upon the country where the balls and rollers are made.

Subheading 8512.40 (Windshield Wipers, Defrosters and Demisters)

The interim rule allows a change to this subheading ''from any other subheading, except when resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to this subheading ''from any other subheading, except when the change is from subheading 8512.90 or heading 8501 as a result of a simple assembly.'' Under this proposed change, the simple assembly limitation is specified only with reference to those tariff provisions from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Subheadings 8517.10–8517.82 (Telephone and Telegraph Apparatus)

The interim rule allows a change to these subheadings ''from any other subheading, including another subheading within that group, except when resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to these subheadings either ''from any subheading outside that group, except from subheading 8517.90'' or ''from subheading 8517.90, provided the change is not the result of a simple assembly.'' Under this proposed change, the simple assembly limitation is specified only with reference to that subheading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Subheadings 8528.10–8528.20 (Television Receivers)

The interim rule allows a change to these subheadings ''from any other subheading, including another subheading within that group.'' Thus, the interim rule allows a change from television tubes. Customs believes that the television tube may determine origin for some television sets. Accordingly, it is proposed to add an exclusion for television tubes (subheadings 8540.11 through 8540.12).

Subheadings 8531.10–8531.80 (Other Electric Sound or Visual Signaling Apparatus)

The interim rule allows a change to these subheadings ''from any other subheading, including another subheading within that group, except when resulting from a simple assembly.'' It is proposed to revise this rule to allow a change to these subheadings ''from any other subheading, including another subheading within that group, except when the change is from subheading 8531.90 as a result of a simple assembly.'' Under this proposed change, the simple assembly limitation is specified only with reference to that subheading from which a tariff shift could possibly result merely from a simple assembly as defined in § 102.1(o).

Headings 8541–8542 (Semiconductor Devices and Integrated Circuits)

It is proposed to modify the second and third interim tariff shift rules for these headings. The proposed change to the second rule would clarify that, under this rule, a change from an unmounted chip, die or wafer of heading 8541 or 8542 is allowed only if the change is to a mounted chip, die or wafer of heading 8541 or 8542. With regard to the third tariff shift rule, which refers to a change ''to any programmed chips from any unprogrammed chips'', the proposed change is intended to align the rule more closely with the court decision upon which the rule was based (*Data General Corporation* v. *United States*, 4 CIT 182 (1982), discussed above, in which the court specifically held that the programming of PROMs is a substantial transformation).

Headings 9101–9107 (Clocks and Watches) and Headings 9108–9109 (Finished Clock and Watch Movements)

Under the interim § 102.20 rule applicable to headings 9101–9107, a change in classification to that group from any other heading, except headings 9108–9110, will result in a country of origin change. Headings 9108–9110 encompass complete and incomplete watch and clock movements, assembled and unassembled. Under the interim § 102.20 rule applicable to headings 9108–9109 (complete and assembled watch and clock movements), a change to either of these headings from any other heading, with the exception of heading 9110, will effect a country of origin change. Heading 9110 includes: complete watch and clock movements, unassembled or partly assembled (movement sets); incomplete watch or clock or watch movements, assembled; and ''rough'' watch or clock movements (sets of unassembled parts of the type described in Additional U.S. Note 1(g)).

A commenter stated that since, under current international practice, the movement will often originate in one country or in several countries while assembly of the watch or clock may take place in another country, country of origin will not be determined on the basis of the interim § 102.20 tariff shift rule applicable to watches and clocks of headings 9101–9107. With respect to finished movements of headings 9108–9109, this commenter was similarly of the opinion that the specified interim § 102.20 tariff shift rule will frequently be inapplicable since parts of movements classified under heading 9110 often originate in one country while the movement may be assembled in a second country. This commenter argued that the interim rules do not reflect commercial reality because substantial assembly operations may take place in the country where the movement is assembled.

It has been the longstanding position of Customs that the country of origin of a watch or clock is the country of manufacture of the watch or clock movement. The addition of the hands, dial, case, or watchband add definition to the watch but do not change the character or use of the watch or clock movement which is the ''guts'' of the time piece. See, for example, HRL 735197 dated January 4, 1994. This Customs position is based on the determination that the last substantial transformation of a finished watch or clock is the assembly of the movement. The interim § 102.20 rule applicable to watches and clocks (the rule for headings 9101–9107) was intended to track current practice, and does so, with the exception noted below. The interim § 102.20 rule applicable to complete movements (the rule for headings 9108–9109) also essentially followed present practice, with the exception noted below, since incomplete or partial movements encompassed by heading 9110 are the ''guts'' of the complete movement.

Customs notes, however, that heading 9110 also includes ''complete watch or clock movements, unassembled'' and ''rough'' watch or clock movements. Since under current practice Customs has repeatedly held that the assembly of individual parts to create a movement (or other similar good of heading 9110) results in a substantial transformation (see, for example, HRL 733533 dated August 3, 1990), it is apparent that the exception language in the interim § 102.20 rules for watches and clocks of headings 9101–9107 and for complete and assembled movements of headings 9108–9109 does not reflect this practice.

Accordingly, it is proposed to amend the § 102.20 rules for clocks and watches and for complete and assembled movements by adding in each case a second rule to allow changes from complete movements, unassembled (movement sets), of subheadings 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90.

Subheadings 9404.10–9404.30 and 9404.90 (Bedding and Similar Furnishings)

It is proposed to replace the § 102.20 listings for subheadings 9404.10–9404.30 and 9404.90 by the following: (1) subheadings 9404.10–9404.29, the tariff shift rule for which would be in substance the same as the interim rule prescribed for subheadings 9404.10–9404.30; and (2) subheadings 9404.30–9404.90, the tariff shift rule for which would, in the case of sleeping bags, comforters, pillows, and similar filled articles, allow a change in the country of origin as a result of the insertion of down and/or feathers but not as a result of the insertion of other materials. In addition, it is proposed to add a Note to the Chapter 94 rules which would set forth a country of origin rule for goods of subheadings 9404.30 through 9404.90 which do not meet the appropriate tariff shift rule specified for those subheadings.

3. Part 134

Section 134.32

In § 134.32 of the Customs Regulations (19 CFR 134.32), it is proposed to remove paragraph (r) (which was adopted in T.D. 94–4 in order to add an exception to marking requirements in the case of non-textile U.S. goods that are exported and returned after repairs or alterations performed abroad). In light of the proposed removal of interim § 102.14 as discussed above, Customs believes that

this paragraph would no longer be appropriate or necessary.

Section 134.43

T.D. 94–4 amended § 134.43 of the Customs Regulations (19 CFR 134.43) by adding a new paragraph (e) which prescribed specific methods of marking goods covered by interim § 102.14. In light of the proposed removal of interim § 102.14 as discussed above, Customs proposes to remove this paragraph (e) which would no longer appear necessary or appropriate.

B. Proposed Changes to the Proposed Regulatory Amendments

As stated above, the purpose of this document is also to republish all of the proposed regulatory amendments contained in the January 3, 1994, notice of proposed rulemaking in order that certain changes thereto may be proposed with opportunity for public comment thereon. The changes to the January 3, 1994, proposals reflected in this document are discussed below.

Elimination of Proposed Amendment to § 4.80b

The January 3, 1994, notice of proposed rulemaking included a proposal to amend § 4.80b of the Customs Regulations (19 CFR 4.80b) by adding at the end of paragraph (a) a sentence stating that the Part 102 rules apply for purposes of determining whether merchandise is manufactured or processed into a new and different product. On further review, Customs has determined that this proposed amendment should not be made.

The Jones Act (46 U.S.C. App. 883), pursuant to which § 4.80b is promulgated, is designed to reserve the coastwise trade for qualified U.S. vessels, a purpose which is not necessarily related to the origin of the goods involved in such trade. Thus, the term ''new and different product'' as used in § 4.80b relates only to the criteria for deeming merchandise not to have been ''transported coastwise'' for purposes of the Jones Act. Customs has not interpreted the § 4.80b language to be synonymous with the term ''substantial transformation'', that is, the requirement that an article be subjected to a processing that results in a ''new and different article of commerce, having a new name, character and/or use'' different from that which it originally possessed. For example, pursuant to T.D. 91–32 and several rulings issued in accordance with this T.D., Customs has established a practice under § 4.80b to determine, solely on the basis of whether there has been a change in ASTM grade, whether a ''new and different product'' results from a fuel oil blending operation. Such a minimal change has not been ruled sufficient in itself to effect a ''substantial transformation''.

Accordingly, the proposed amendments set forth in this document do not include a proposal to amend § 4.80b.

Removal of § 10.22

Section 10.22 of the Customs Regulations (19 CFR 10.22) provides that for all assembled goods which are ''entitled to'' (whether or not they are in fact the subject of a claim for) a duty allowance under subheading 9802.00.80, HTSUS, the country of assembly is the country of origin of such goods for marking purposes. Thus, § 10.22 operates in practice as an exception to the country of origin marking requirements of Part 134 of the Customs Regulations.

Subheading 9802.00.80 duty treatment can be properly applied to assembled goods having only a few U.S. components, with most of the other components originating in countries other than either the United States or the country of assembly. In such a case, the true country of origin as determined under the Part 102 rules may be one of those other foreign countries, whereas by application of § 10.22 the country of origin for marking purposes would be the country of assembly. Thus, if the regulatory amendments set forth in the January 3, 1994, notice of proposed rulemaking and republished in this document (the basic intent of which is to result in uniform application of the rules of origin contained in Part 102) are adopted as a final rule, retention of § 10.22 could lead to incorrect or inconsistent country of origin determinations and country of origin marking. Accordingly, Customs proposes in this document to remove § 10.22.

Additional Amendment to § 177.22(a)

The January 3, 1994, notice of proposed rulemaking included a proposed amendment to § 177.22(a) of the Customs Regulations (19 CFR 177.22(a)) which defines ''country of origin'' for purposes of government procurement country of origin determinations. This proposed amendment consisted of adding at the end thereof a sentence stating that the expression ''wholly the growth, product, or manufacture'' refers to articles wholly obtained or produced within the meaning of interim § 102.1(g).

In response to a comment from the Office of General Counsel, General Services Administration (GSA), Customs is proposing to revise § 177.22(a) in order to also make reference to use of the Part 102 rules for determining when there is a ''new and different article'' for purposes of that section. This provision would be similar to the proposals to amend §§ 10.176 and 10.195 of the Customs Regulations (19 CFR 10.176 and 10.195) as contained in the January 3, 1994, notice of proposed rulemaking and as set forth below. Customs also notes that, as stated to Customs by the GSA, this additional amendment will be consistent with Article 1004 of the NAFTA which requires that, if the parties apply the marking rules established pursuant to NAFTA Annex 311 in their normal course of trade (as Customs is proposing in this document to apply the Part 102 rules), such rules will be applicable for NAFTA government procurement purposes.

C. Final Rule Delayed Effective Date

In consideration of the fact that the regulatory amendments set forth in the January 3, 1994, notice of proposed rulemaking, as republished in this document with the changes discussed above, would have the effect of making the Part 102 interim rules applicable for all country of origin determinations under the Customs and related laws, including for purposes of country of origin marking, Customs believes that, in keeping with the principle enunciated in *National Juice Products Association v. United States*, 10 CIT 48, 628 F.Supp. 978 (CIT 1986), it would be an appropriate exercise of administrative discretion in this particular case to solicit comments from the public regarding a proposed delayed effective date.

Although *National Juice Products* involved a change of Customs position effected through an interpretive ruling rather than through amendments to the Customs Regulations, and notwithstanding the fact that the Part 102 rules merely codify Customs' existing position regarding substantial transformation, Customs believes that the circumstances cited by the Court to justify a delayed effective date in that case would be no less applicable here.

Accordingly, it is proposed that, if Customs determines that the proposed amendments set forth in the January 3, 1994, notice of proposed rulemaking as republished in this document with the changes discussed above, together with the interim regulations published as T.D. 94–4 and the proposed changes thereto as set forth in this document, should be adopted as a final rule with whatever changes as may be necessary to address comments submitted by the

public, the regulatory changes incorporated in the final rule would become effective 90 days after the date of publication of that final rule document in the **Federal Register**. Comments from the public are invited on this proposal for a delayed effective date.

Comments

Before adopting the proposed amendments as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 134

Country of origin, Customs duties and inspections, Imports, Labeling, Marking, Packaging and containers.

19 CFR Part 177

Administrative practice and procedures, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

For the reasons stated above, it is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for part 10 and the specific authority citations for §§ 10.171–10.178 and §§ 10.191–10.198 continue to read as follows, and the specific authority citation for § 10.22 is removed:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

Sections 10.171–10.178 also issued under 19 U.S.C. 2461 *et seq.;*

Sections 10.191–10.198 also issued under 19 U.S.C. 2701 *et seq.;*

* * * * *

2. Section 10.12 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 10.12 Definitions.

* * * * *

(e) * * * If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed as provided in § 10.14(b).

3. Section 10.14 is amended by revising the text in paragraph (b) preceding the examples to read as follows:

§ 10.14 Fabricated components subject to the exemption.

* * * * *

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials will become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when under part 102 of this chapter, the country of origin of a good which is produced in the United States from foreign materials is determined to be the United States.

* * * * *

4. Section 10.22 is removed.

5. Section 10.171 is amended by adding a new paragraph (c) to read as follows:

§ 10.171 General.

* * * * *

(c) *Wholly the growth, product, or manufacture defined.* For purposes of §§ 10.171 through 10.178, the expression ''wholly the growth, product, or manufacture'' refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

6. Section 10.176(a) is revised to read as follows:

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries.* Any article which is wholly the growth, product, or manufacture of a beneficiary developing country or of any two or more countries that are members of the same association of countries or which is a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary developing country, and which is imported directly from such beneficiary developing country or member countries, may qualify for duty-free entry under the Generalized System of Preferences (GSP). However, duty-free entry under GSP may be accorded only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries that is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States. For purposes of this section, a ''new and different article of commerce'' exists when under part 102 of this chapter, the country of origin of a good, which is produced in a beneficiary developing country from foreign materials, is determined to be that beneficiary developing country.

* * * * *

7. Section 10.191(b)(3) is revised to read as follows:

§ 10.191 General.

* * * * *

(b) *Definitions.*

* * * * *

(3) *Wholly the growth, product, or manufacture.* For purposes of § 10.191 through § 10.198, the expression ''wholly the growth, product, or manufacture'' refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

* * * * *

8. Section 10.195(a)(1) is amended by adding a sentence at the end to read as follows:

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country.* (1) * * * For purposes of this section, a ''new and different article of commerce'' exists when under part 102 of this chapter, the country of origin of a good, which is produced in a beneficiary country from foreign materials, is determined to be that beneficiary country.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. Section 12.130 is amended by removing paragraphs (d) and (e) and redesignating paragraphs (f) through (i) as paragraphs (d) through (g), and by revising paragraph (b) to read as follows:

§ 12.130 Textiles and textile products country of origin.

* * * * *

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c) of this section, a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly obtained or produced (as defined in § 102.1(g) of this chapter) in that foreign territory or country, or insular possession. However, except as provided in paragraph (c) of this section, a textile or textile product, subject to section 204 of the Agricultural Act of 1956, as amended, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession, where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation when under part 102 of this chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

* * * * *

PART 102—RULES OF ORIGIN

1. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624, and the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057.

2. Section 102.0 is revised to read as follows:

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods for purposes of the Customs and related laws and the navigation laws of the United States. The rules in this part regarding goods wholly obtained or produced in a country are intended to apply for all such purposes. The rules in this part which determine when a good becomes a new and different article of commerce as a result of manufacturing processes in a given country, also are intended to apply for all purposes where this requirement exists for ''country of origin'' or ''product of'' determinations under the Customs laws. The rules in this part also will be applied by the United States for determining when a good is a good of a North American Free-Trade Agreement (NAFTA) country for the purposes specified under Annex 311 of the NAFTA.

§ 102.1 [Amended]

3. In section 102.1, paragraph (p) is removed and paragraph (q) is redesignated as paragraph (p).

4. Section 102.11(d) is revised to read as follows:

§ 102.11 General rules.

* * * * *

(d) Where the country of origin of a good cannot be determined under paragraph (a), (b) or (c) of this section, the country of origin of the good shall be determined as follows:

(1) If the good was produced only as a result of minor processing, the country of origin of the good is the country or countries of origin of each material that merits equal consideration for determining the essential character of the good;

(2) If the good was produced by simple assembly and the assembled parts that merit equal consideration for determining the essential character of the good are from the same country, the country of origin of the good is the country of origin of those parts; or

(3) If the country of origin of the good cannot be determined under paragraph (d)(1) or (d)(2) of this section, the country of origin of the good is the last country in which the good underwent production.

§ 102.14 [Removed]

5. Section 102.14 is removed and reserved.

§ 102.16 [Removed]

6. Section 102.16 is removed and reserved.

7. Section 102.17 is amended by revising the introductory text and paragraph (e) to read as follows:

§ 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone an applicable change in tariff classification specified in § 102.20 or to have met any other applicable requirements of that section merely by reason of one or more of the following:

* * * * *

(e) Collecting parts that, as collected, are classifiable in the same tariff provision as an assembled good pursuant to General Rule of Interpretation 2(a), without any additional operation other than minor processing.

8. Section 102.18 is revised to read as follows:

§ 102.18 Rules of interpretation.

(a) When General Rule of Interpretation (GRI) 2(a) is referred to in § 102.20 as an exception to an allowed change in tariff classification, this means that such change will not be acceptable for purposes of that section if the change results from the assembly of parts into an incomplete or unfinished good which is classifiable in the same manner as a complete or finished good pursuant to GRI 2(a).

(b)(1) For purposes of identifying the material or materials that impart the essential character of a good under § 102.11, the only materials that shall be taken into consideration are those domestic or foreign materials that are classified in a tariff provision from which a change in tariff classification is

not allowed under the § 102.20 specific rule or other requirements applicable to the good. For purposes of this paragraph (b)(1):

(i) The materials that may be considered must be classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good under consideration. For example, in the case of a good classified in HTSUS subheading 8607.11 (the rule for which specifies a change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a)), the only materials that may be considered for purposes of identifying the materials that impart the essential character of the good are those that are classified in subheadings 8607.11, 8607.12 and, if the tariff shift is pursuant to GRI 2(a), 8607.19; and

(ii) Materials that may be considered include materials produced by the producer of the good and incorporated in the good. For example, if a producer of a good purchases raw materials and converts those raw materials into a component that is incorporated in the good, that component is a material that may be considered for purposes of identifying the materials that impart the essential character of the good, provided that the component is classified in a tariff provision from which a change in tariff classification is not allowed under the specific rule or other requirements applicable to the good.

(2) For purposes of determining which material or materials impart the essential character of a good under § 102.11, various factors may be examined depending upon the type of good involved. These factors include, but are not limited to, the following:

(i) The nature of each material, such as its bulk, quantity, weight or value; and

(ii) The role of each material in relation to the use of the good.

9. Section 102.19 is revised to read as follows:

§ 102.19 NAFTA preference override.

(a) Except in the case of goods covered by paragraph (b) of this section, if a good which is originating within the meaning of § 181.1(q) of this chapter is not determined under § 102.11 (a) or (b) to be a good of a single NAFTA country, the country of origin of such good is the last NAFTA country in which that good underwent production other than minor processing, provided that a Certificate of Origin (see § 181.11 of this chapter) has been completed and signed for the good.

(b) If, under any other provision of this part, the country of origin of a good which is originating within the meaning of § 181.1(q) of this chapter is determined to be the United States and that good has been exported from, and returned to, the United States after having been advanced in value or improved in condition in another NAFTA country, the country of origin of such good for Customs duty purposes is the last NAFTA country in which that good was advanced in value or improved in condition before its return to the United States.

10. In § 102.20, the table is amended by revising the Note and removing the entry for HTSUS 09.04–09.10 under Section II, by adding a Chapter 42 Note under Section VIII, by removing the entry for HTSUS 4810–4814 under Section X, by revising Note (1)d and adding a new Note (1)f and revising Note (3) and removing the entry for HTSUS 5804 and removing the entry for HTSUS 6115–6117 under Section XI, by adding a Chapter 65 Note under Section XII, by removing the entry for HTSUS 7010–7018 under Section XIII, by removing the Note to Section XVI, by adding a Chapter 94 Note and removing the entry for HTSUS 9404.10–9404.30 and removing the entry for HTSUS 9404.90 under Section XX, and by adding and revising the following HTSUS entries in numerical order to read as follows:

§ 102.20 Specific rules by tariff classification.

* * * * *

HTSUS—Tariff Shift and/or Other Requirements

* * * * *

(b) Section II: Chapters 6 through 14.

Note: Notwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, or from whole plants, imported from a foreign country.

* * * * *

0904–0910 A change to heading 0904 through 0910 from any other chapter; or A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good.

* * * * *

1517.90 A change to subheading 1517.90 from any other chapter; or A change to subheading 1517.90 from any other heading provided that no single oil ingredient of foreign origin constitutes more than 60 percent by volume of the good.

* * * * *

1901.90 A change to subheading 1901.90 from any other heading.

* * * * *

2103.90 A change to subheading 2103.90 from any other subheading.

* * * * *

4104–4107 A change to headings 4104 through 4107 from any other heading, including another heading within that group.

* * * * *

Chapter 42 Note: For the purposes of § 102.11(b) of the General Rules, except for sets, where a textile good classifiable in Chapter 42 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the country of origin of the component which determines the classification of that good. However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *

4810 A change to heading 4810 from any other heading.

4811.10–4811.31 A change to subheading 4811.10 through 4811.31 from any other heading.

4811.39 A change to subheading 4811.39 from any other heading, except from heading 4804.

4811.40–4811.90 A change to subheading 4811.40 through 4811.90 from any other heading.

4812–4814 A change to heading 4812 through 4814 from any other heading, including a heading within that group.

* * * * *

4823.20–4823.59 A change to subheading 4823.20 through 4823.59 from any other chapter.

* * * * *

4823.70–4823.90 A change to subheading 4823.70 through 4823.90 from any other subheading, including another subheading within that group.

* * * * *

(k) Section XI: Chapters 50 through 63.

Notes: (1) * * *

d. The phrase ''fully lined, fully padded, or fully insulated'', as used in chapters 61 and 62, means that the major parts of the garment are entirely lined, padded, or insulated, but this does not include waistbands less than fifteen centimeters wide, cuffs less than ten centimeters wide, plackets, collars, shoulder straps, and the like.

* * * * *

f. The phrase ''minor embellishments'', as used in headings 6302 and 6304, refers to relatively insignificant methods used to enhance the visual appeal of a good, e.g., piping, capping, small amounts of embroidery.

* * * * *

(3) For the purposes of § 102.11(b) of the General Rules, except for sets, where a good classifiable in Chapter 61 through 63 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the single country where the component which determines the classification of that good was cut or formed (e.g. knit to shape). However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *

5101–5105 A change to heading 5101 through 5105 from any other chapter; or A change to combed wool of heading 5105 from greasy wool of heading 5101.

* * * * *

5609 A change to heading 5609 from any other heading except from heading 5004 through 5007, 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5604 through 5607.

* * * * *

5804.10 A change to subheading 5804.10 from any other heading except from heading 5608; or

A change from greige fabric of subheading 5804.10 to finished fabric of that same subheading by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

5804.21–5804.30 A change to subheadings 5804.21 through 5804.30 from any subheading outside that group; or

A change from greige fabric of subheadings 5804.21 through 5804.30 to finished fabric of those same subheadings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

* * * * *

5806.10–5806.39 A change to subheading 5806.10 through 5806.39 from any heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and 5801; or

A change from greige fabric of subheading 5806.10 through 5806.39 to finished fabric of those same subheadings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.

* * * * *

5810 A change of the ground fabric to heading 5810 from any other chapter except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602, 5603, 5608, 5903, 5907, 6001, and 6002; or

Where the weight of the embroidery comprises seven percent or more of the weight of the foreign fabric and the embroidery changes the commercial character of the base fabric, a change to heading 5810 from any other heading.

* * * * *

5903 A change to heading 5903 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002; or

(1) For woven fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 15 percent of the total weight of the fabric; or

(2) For knit fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 20 percent of the total weight of the fabric.

* * * * *

6101 A change to heading 6101 from any other chapter; or

A change to assembled garments of heading 6101, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6101 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

6102 A change to heading 6102 from any other chapter; or

A change to assembled garments of heading 6102, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6102 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

* * * * *

6103.21–6103.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6103.21 through 6103.29 from either subheading 6117.90 or subheading 6217.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6103.21 through 6103.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6104.21–6104.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6104.21 through 6104.29 from either subheading 6117.90 or subheading 6217.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6104.21 through 6104.29 as a result of the

application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6115–6116 A change to heading 6115 through 6116 from any other chapter.

6117.10 A change to subheading 6117.10 from any other chapter except chapter 60; or A change to subheading 6117.10 from greige fabric of chapter 60 by bleaching, dyeing, printing, cutting on all sides, and stitching.

6117.20–6117.90 A change to subheading 6117.20 through 6117.90 from any other chapter.

6201 A change to heading 6201 from any other chapter, provided that no major part has been knit to shape; or

A change to assembled garments of heading 6201, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6201 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

6202 A change to heading 6202 from any other chapter; or

A change to assembled garments of heading 6202, except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or

A change to assembled garments from unassembled parts classified in heading 6202 as a result of the application of GRI 2(a), except (1) anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, provided that no major part has been knit to shape.

* * * * *

6203.21–6203.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6203.21 through 6203.29 from either subheading 6217.90 or subheading 6117.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6203.21 through 6203.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6204.21–6204.29 Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments of subheading 6204.21 through 6204.29 from either subheading 6217.90 or subheading 6117.90; or

If the ensemble contains a suit-like jacket or blazer, a change to assembled garments from unassembled parts classified in subheading 6204.21 through 6204.29 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6205 A change to heading 6205 from any other chapter, provided that no major part has been knit to shape; or

A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, of heading 6205, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or

A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, from unassembled parts classified in heading 6205 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.

* * * * *

6213–6214 A change to heading 6213 through 6214 from any other chapter except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5808 through 5811, 5901, 5903, and 5906 through 5907; or

A change to heading 6213 through 6214 from greige fabric of heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5808 through 5811, by bleaching, dyeing, printing, cutting on all sides, and stitching.

* * * * *

6302 (1) Except for quilted goods provided for in (2) below, a change to heading 6302 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002; or

Except for quilted goods provided for in (2) below, a change to heading 6302 from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002, provided that the change is the result of cutting finished fabric on all sides and hemming all cut edges plus at least one other subsequent process, with no consideration being given to the addition of minor embellishments.

(2) For quilted goods, either (a) a change to heading 6302 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country; or (b) If (a) is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods.

6303 (1) For quilted goods, a change to heading 6303 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods; or

(2) For curtains, drapes, or valances,

except for goods provided for in (1) above, a change to heading 6303 from any other heading, provided that the change is the result of more than cutting on all sides and hemming the cut edges and with no consideration being given to minor processing.

(3) For goods not meeting paragraphs (1) or (2) above, and all other goods, a change to heading 6303 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5811, 5901, 5903, 5906 through 5907, and 6001 through 6002.

6304 (1) Except for quilted goods, pillow covers, and pillow shams provided for in (2) and (3) below, a change to heading 6304 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, and 6001 through 6002; or

Except for quilted goods, pillow covers, and pillow shams provided for in (2) and (3) below, a change to heading 6304 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002, provided that the change is the result of cutting finished fabric on all sides and hemming all cut edges plus at least one other subsequent process, with no consideration being given to the addition of minor embellishments.

(2) For quilted goods, a change to heading 6304 from any other heading except from subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods;

(3) For pillow covers and pillow shams, a change to heading 6304 from any other heading.

* * * * *

6306.91–6306.99 A change to subheading 6306.91 through 6306.99 from any other heading except from subheading 6307.90, provided that the change is the result of more than cutting and hemming processes and with no consideration being given to minor processing.

* * * * *

6307.90 A change to subheading 6307.90 from any other heading, provided that the change is the result of at least cutting and a substantial amount of either sewing or assembly operations.

* * * * *

Chapter 65 Note: For the purposes of § 102.11(b) of the General Rules, except for sets, where a textile good classifiable in Chapter 65 does not meet the tariff shift and/or other requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the country of origin of the component which determines the classification of that good. However, if more than one component determines classification or the component that determines classification has its origin in more than one country, the country of origin of the good shall be the last country in which the good underwent production other than minor processing.

* * * * *

6811.90 A change to subheading 6811.90 from any other heading.

* * * * *

6812.90 A change to subheading 6812.90 from any other heading.

* * * * *

6814.90 A change to subheading 6814.90 from any other heading.

* * * * *

7010 A change to heading 7010 from any other heading.

7011 change to heading 7011 from any other heading, except from subheading 7003.30.

7012–7018 A change to heading 7012 through 7018 from any other heading, including another heading within that group; or

A change from uncut and unpolished glassware blanks of heading 7013 to cut and polished glassware of heading 7013, provided that there has been a substantial amount of both cutting and polishing operations in a single country.

* * * * *

7019.90 A change to subheading 7019.90 from any other heading.

7020 A change to heading 7020 from any other heading, except from heading 7010 through 7018.

* * * * *

8301.10–8301.50 A change to subheading 8301.10 through 8301.50 from any other subheading, including any subheading within that group, except a change from subheading 8301.60 when that change is pursuant to GRI 2(a).

* * * * *

8401.20 A change to subheading 8401.20 from any other subheading; or

A change to completed machinery and apparatus of subheading 8401.20 from parts of that same subheading.

* * * * *

8415.90 A change to subheading 8415.90 from any other subheading, except when the change is from heading 7411, 7608, 8414, 8501, and 8535 through 8537 as a result of a simple assembly.

* * * * *

8470.10–8471.91 A change to subheading 8470.10 through 8471.91 from any subheading outside that group, except from heading 8473; or

A change to subheading 8470.10 through 8471.91 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

8471.92–8472.90 A change to subheading 8471.92 through 8472.90 from any subheading outside that group, except heading 8473; or

A change to subheading 8471.92 through 8472.90 from any subheading within that group or from heading 8473, provided the change is not the result of a simple assembly.

8473 A change to heading 8473 from any other heading, except when the change is from heading 8414, 8501, 8504, 8534, 8541, or 8542 as a result of a simple assembly.

8474.10–8474.80 A change to subheading 8474.10 through 8474.80 from any subheading outside that group, except heading 8501; or

A change to subheading 8474.10 through 8474.80 from any subheading within that group or heading 8501, provided the change is not the result of a simple assembly.

* * * * *

8482.10–8482.80 A change to subheading 8482.10 through 8482.80 from any other heading; or

A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, except from inner or outer races or rings of subheading 8482.99.

* * * * *

8512.40 A change to subheading 8512.40 from any other subheading, except when the change is from subheading 8512.90 or heading 8501 as a result of a simple assembly.

* * * * *

8517.10–8517.82 A change to subheading 8517.10 through 8517.82 from any subheading outside that group, except from subheading 8517.90; or

A change to subheading 8517.10 through 8517.82 from subheading 8517.90, provided the change is not the result of a simple assembly.

* * * * *

8528.10–8528.20 A change to subheading 8528.10 through 8528.20 from any other subheading, including another subheading within that group, except from subheading 8540.11 through 8540.12.

* * * * *

8531.10–8531.80 A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except when the change is from subheading 8531.90 as a result of a simple assembly.

* * * * *

8541–8542 A change to heading 8541 through 8542 from any other subheading, including another subheading within that group; or

A change to a mounted chip, die or wafer of heading 8541 or 8542 from an unmounted chip, die or wafer of heading 8541 or 8542; or

A change to a programmed ''read only memory'' (ROM) chip from an unprogrammed ''programmable read only memory'' (PROM) chip.

* * * * *

8708.99 A change to subheading 8708.99 from any other subheading.

* * * * *

9101–9107 A change to heading 9101 through 9107 from any heading outside that group, except heading 9108 through 9110; or

A change to heading 9101 through 9107 from complete movements, unassembled, of subheading 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90.

9108–9109 A change to heading 9108 through 9109 from any heading outside that group, except heading 9110; or

A change to heading 9108 through 9109 from complete movements, unassembled, of subheading 9110.11 or 9110.90, or from rough movements of subheading 9110.19 or 9110.90.

9110 A change to heading 9110 from any other heading, except from subheading 9114.90.

* * * * *

Chapter 94 Note: For a good classifiable in subheadings 9404.30 through 9404.90 which does not meet the appropriate tariff shift rule specified for those subheadings, the country of origin is the country where all cutting and sewing operations required to form the outer shell were performed. If all cutting and sewing operations required to form the outer shell were not performed in a single country, the country of origin will be the single country where the component of the outer shell which determines the classification of that good was produced. If a single country did not produce a component of the outer shell which determines the classification of that good, then the country of origin will be the country in which the good last underwent a substantial assembly process.

* * * * *

9401.90 A change to subheading 9401.90 from any other heading, except from subheading 9403.90.

* * * * *

9403.90 A change to subheading 9403.90 from any other heading, except from subheading 9401.90.

9404.10–9404.29 A change to subheading 9404.10 through 9404.29 from any other heading.

9404.30–9404.90 A change to down and/or feather filled goods of subheading 9404.30 through 9404.90 from any other heading; or

For all other goods of subheading 9404.30 through 9404.90, a change from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, 6001 through 6002, and 6307.90.

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9606.21–9606.29 A change to subheading 9606.21 through 9606.29 from any other heading.

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PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1304, 1624.

2. Section 134.1 is amended by revising paragraph (b), redesignating paragraphs (d) through (j) as (e) through (k), adding a new paragraph (d), and revising newly designated paragraphs (e) (1) and (2) to read as follows:

§ 134.1 Definitions.

* * * * *

(b) *Country of origin.* ''Country of origin'', when used with reference to any article of foreign origin imported into the United States, means the country in which the article was wholly obtained or produced within the meaning of § 102.1(e) of this chapter, or, in the case of an article not wholly obtained or produced in one country, the country where the article last underwent a substantial transformation prior to its importation into the United States.

* * * * *

(d) *Substantial transformation.* ''Substantial transformation'' occurs when, under part 102 of this chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

(e) *Ultimate purchaser.* * * *

(1) If an imported article will be used in further processing, the processor will be the ''ultimate purchaser'' if he subjects the imported article to a process which results in a substantial transformation of the article.

(2) If the process does not result in a substantial transformation of the imported article, the consumer or user of the article, who obtains the article after the processing, will be regarded as the ''ultimate purchaser''.

* * * * *

§ 134.32 [Amended]

3. In § 134.32, paragraph (r) is removed.

4. Section 134.35 is revised to read as follows:

§ 134.35 Articles substantially transformed after importation.

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if such article is determined to be a good of the United States under part 102 of this chapter. In such a case, the imported article is excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) and § 134.32(d), provided the container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

§ 134.43 [Amended]

5. In § 134.43, paragraph (e) is removed.

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624;

* * * * *

2. In § 177.22, paragraph (a) is revised to read as follows:

§ 177.22 Definitions.

(a) *Country of origin.* For the purpose of this subpart, an article is a product of a country or instrumentality only if it is wholly the growth, product, or manufacture of that country or instrumentality or, in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce. The term ''instrumentality'' shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community. For purposes of this section, an article is ''wholly the growth, product, or manufacture'' of a country or instrumentality if it is wholly obtained or produced (as defined in § 102.1(g) of this chapter) in that country or instrumentality, and a ''new and different article of commerce'' exists when under part 102 of this chapter, the country of origin of a good, which is produced in a country or instrumentality from foreign materials, is determined to be that country or instrumentality.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: April 19, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–10856 Filed 5–4–95; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Regulatory Program

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

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the New Mexico regulatory program (hereinafter, the ''New Mexico program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to and additions of rules pertaining to definitions, designation of lands unsuitable for surface coal mining, permit application information, minimum requirements for reclamation and operation plans in permit applications, review and approval or denial of permit applications and permit conditions, performance standards for coal exploration, and performance standards for surface coal mining operations. The amendment is intended to revise the New Mexico program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., m.d.t. June 5, 1995. If requested, a public hearing on the proposed amendment will be held on May 30, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on May 22, 1995.

ADDRESSES: Written comments should be mailed or hand delivered to Thomas Ehmett at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Albuquerque Field Office.

Thomas E. Ehmett, Acting Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue, NW., Suite 1200, Albuquerque, New Mexico 87102

New Mexico Energy and Minerals Department, Mining and Minerals Division, 2040 South Pacheco Street, Santa Fe, New Mexico 87505, Telephone: (505) 827–5970

FOR FURTHER INFORMATION CONTACT: Thomas Ehmett, Telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, **Federal Register** (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.11, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated April 13, 1995, New Mexico submitted a proposed amendment to its program (administrative record No. NM–739) pursuant to SMCRA (U.S.C. 1201 *et seq.*). New Mexico submitted the proposed amendment in response to the required program amendments at 30 CFR 931.16(c), (d), and (f) through (s) (56 FR 67520, December 31, 1991, and 58 FR 65907, December 17, 1993) and at its own initiative. The provisions of the New Mexico rules that New Mexico proposes to revise are: Coal Surface Mining Commission (CSMC) Rule 80–1–5, definitions; CSMC Rule 80–1–4–15, designation of lands unsuitable for surface coal mining; CSMC Rule 80–1–7–14, permit application information; CSMC Rule 80–1–9–39, minimum requirements for reclamation and operation plans in permit applications; CSMC Rules 80–1–11–17, 80–1–11–19, 80–1–11–20, and 80–1–11–29, review of and approval or denial of permit applications and permit conditions; CSMC Rule 80–1–19–15, performance standards for coal exploration; and CSMC Rules 80–1–20–41 and 49, 80–1–20–82, 80–1–20–89, 80–1–20–93, 80–1–20–97, 80–1–20–116 and 117, 80–1–20–124, and 80–1–20–150, performance standards for surface coal mining operations.

Specifically, New Mexico proposes to revise CSMC Rule 80–1–5 to define ''qualified laboratories'' and ''SMCRA;'' CSMC Rule 80–1–4–15(b)(1) to require that New Mexico publish in its State Register receipt of a petition to designate lands unsuitable for surface coal mining; and CSMC Rule 80–1–7–14(c) to require that a permit application include information on all violations received pursuant to SMCRA.

Concerning minimum requirements for reclamation and operation plans in permit applications, New Mexico proposes to revise CSMC Rule 80–1–9–39(c) to require a permit application to include a description of measures that an operator would use to mitigate or remedy subsidence-related material damage to the land and occupied residential dwellings, structures related thereto, and noncommercial buildings where the damage resulted from underground mining operations conducted after October 24, 1992; and CSMC Rule 80–1–9–39(d) to delete in its entirety paragraph (d)(2), concerning an exception from subsidence control measures.

Concerning review and approval or disapproval of permit applications and permit conditions, New Mexico proposes to revise CSMC Rule 80–1–11–17 to ad paragraph (c) concerning issuance of a permit for a surface coal mining and reclamation operation owned or controlled by either the applicant of by any person who owns or controls the applicant who is currently in violation of any provision of, among other things, New Mexico's Act or SMCRA; CSMC Rule 80–1–11–17(d) and 19(i), to require that New Mexico, when making a determination of whether a demonstration pattern of willful violations exists, also consider violations received pursuant to SMCRA by the applicant, anyone who owns or controls the applicant, or the operator named in the application; CSMC Rule 80–1–11–20(b)(1) to require that New Mexico use the criteria contained in 54 FR 18438, 18440–18441, to determine what specific unabated violations, delinquent penalties and fees, and ownership and control relationships apply when determining whether a permit was improvidently issued; CSMC Rule 80–1–11–20(b)(5) to reference CSMC Rule 80–1–11–20(b)(1) rather than CSMC Rule 80–1–7–14; and CSMC Rule 80–1–11–29(d) to require as a permit condition that the permittee submit to New Mexico any Federal cessation order issued in accordance with 30 CFR 843.11.

Concerning performance standards for coal exploration, New Mexico proposes to revise CSMC Rule 80–1–19–15(c)(2) to require that roads or other transportation facilities used for coal exploration activities comply with CSMC Rules 80–1–20–150(b) through (g) and 20–181(a) and (b); CSMC Rule 80–1–19–15(c)(3) to delete paragraph (iv) concerning the requirement that all existing roads used for coal exploration comply with the requirements of CSMC Rules 80–1–20–180 and 181; and CSMC Rule 80–1–19–15(c)(4) to require that, after exploration activities are completed, roads not to be retained for use under an approved land use shall comply with paragraphs (4)(i) or (4)(ii).

Concerning performance standards for surface coal mining operations, New Mexico proposes to revise CSMC Rule 80–1–20–41(e)(3)(i) to correct a typographical error; CSMC Rule 80–1–20–49(e) (1) through (9) to add a list of general requirements that apply to all temporary and permanent impoundments; CSMC Rules 80–1–20–82(a)(4) and 80–1–20–89(d)(2) to correct typographical errors; CSMC Rule 80–1–20–93–(a)–1), concerning design and construction of dams and embankments constructed of coal processing waste or intended to impound such waste, to require that the design freeboard be adequate to resist overtopping by waves and sudden increases in storage volume and to delete a reference to the U.S. National Resource Conservation Service's (NRCS's) ''Practice Standard 378'' for determination of the allowed maximum water elevation; CSMC Rule 80–1–20–97 (b) and (c) to extend the protection of threatened and endangered species to areas disturbed by the conduct of reclamation operations; CSMC Rule 80–1–20–116(a) to reference (1) the general requirements for success of revegetation at CSMC Rule 80–1–20–111 and –120 and (2) the NRCS's ''Technical Guide by Major Land Resource Area: Section II–E,'' concerning the technical procedures which are allowed for use in determining success standards for ground cover and productivity; CSMC Rule 80–1–20–116(b)(3) to clarify that (1) ground cover, production, or stocking shall be considered equal to the approved success standard when they are greater than or equal to 90 percent of the success standard and (2) statistical techniques for measuring success shall use an appropriate (parametric or nonparametric) one-tail test with a 90 percent confidence interval and a 10 percent alpha error; CSMC Rule 80–1–20–116(b)(7) so that its requirements for the measurement of revegetation success of trees and shrubs apply also to areas reclaimed for use as recreation and shelterbelts; CSMC Rule 80–1–20–117 so that its requirements for the measurement of success of tree and shrub stocking also apply to areas reclaimed for use as fish and wildlife habitat, recreation, and shelterbelts, and to require that trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use; CSMC Rule 80–1–20–117(c), concerning areas reclaimed for use as commercial forest, at paragraph (c)(1) to require that the minimum stocking of trees or shrubs be determined by the State Forester on a permit-specific basis, at paragraph (c)(3) to reference CSMC Rule 80–1–20–117(b) for procedures to determine the number of trees or shrubs and ground cover, and at paragraph (c)(4) to reference CSMC Rules 80–1–20–116(b)(7) and 80–1–20–117(d)(2) for success standards applicable to tree and shrub stocking and ground cover; CSMC Rule 80–1–20–117(d)(3)(i), concerning the measurement of revegetation success of woody plants, to reference CSMC Rule 80–1–20–116(b) for determination of the success standard and to require that the standard be met with 90 percent statistical confidence, using an appropriate (parametric or nonparametric) one-tail test with a 10 percent alpha error; CSMC Rule 80–1–20–124 to delete its existing requirements concerning repair of damage caused by subsidence and to add paragraphs (a), (b), and (c) which respectively, (1) require repair or compensation for material damage resulting from subsidence caused to any occupied residential dwellings and structures related thereto, or noncommercial building due to underground coal mining operations, (2) require replacement of any drinking, domestic, or residential water supply from a well or spring that existed prior to the application for a coal mining and reclamation permit, which has been affected by contamination, diminution, or interruption resulting from underground mining operations, and (3) state that nothing in this section shall be construed to prohibit or interrupt underground coal mining operations; and CSMC Rule 80–1–20–150 to delete paragraph (c) which prohibits vehicular use of fords or low water crossings by ancillary roads any time there is visible surface flow.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexican program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION** by 4:00 p.m., m.d.t. on May 22, 1995. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an

opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (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 this 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.

V. List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 1, 1995.

Charles E. Sandberg,

Acting Regional Director, Western Regional Coordinating Center.

[FR Doc. 95–11153 Filed 5–4–95; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO–17–1–6023B; FRL–5197–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Missouri for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for lead. The SIP was submitted by the state to satisfy certain Federal requirements for an approvable nonattainment area lead SIP for the Doe Run primary lead smelter in Herculaneum, Missouri. In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal, because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 5, 1995.

ADDRESSES: Comments may be mailed to: Lisa V. Haugen, Environmental Protection Agency, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen at (913) 551–7877.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 12, 1995.

Dennis Grams,

Regional Administrator.

[FR Doc. 95–10977 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT11–1–6726b, UT12–1–6727b and UT13–1–6746b; FRL–5184–6]

Approval and Promulgation of Air Quality Implementation Plans; Utah; New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the EPA is proposing approval of revisions to the State Implementation Plan (SIP) pertaining to the State of Utah's new source review (NSR) regulations, which were submitted by the Governor of Utah on November 12, 1993 and June 27, 1994. EPA is also proposing approval of revisions to the State's definition of volatile organic compounds, which was submitted by the Governor of Utah on May 20, 1994. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this submittal as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, then the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this notice. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed action must be received in writing by June 5, 1995.

ADDRESSES: Written comments should be addressed to Vicki Stamper, 8ART–AP, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations: Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466; and Division of Air Quality, Utah Department of Environmental Quality, PO Box 144820, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the rules section of this **Federal Register**.

Dated: March 24, 1995.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 95–10822 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[NC–63–1–6394b; FRL–5189–4]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State implementation plan (SIP) revision submitted by the State of North Carolina for the purpose of establishing an emission statement program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by June 5, 1995.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404/347–3555 ext. 4215. Reference file NC70–2–6861.

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

Dated: March 28, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–10824 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WA 32–1–6894b; FRL–5192–2]

Approval and Promulgation of State Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State of Washington's contingency measure plan as a revision to Washington's State Implementation Plan (SIP) for carbon monoxide (CO). The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for the Puget Sound Carbon Monoxide Nonattainment Area. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: Comments on this proposed rule must be received in writing by June 5, 1995.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (AT–082), Air Programs Section, at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

U.S. Environmental Protection Agency, Region 10, Air Programs Section, 1200 6th Avenue, Seattle, WA 98101.

The Washington State Department of Ecology, P.O. Box 47600, Olympia, Washington, 98504–7600.

FOR FURTHER INFORMATION CONTACT: Stephanie Cooper, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6917.

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

Dated: April 7, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–11049 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 52

[MS–19–1–6758b; FRL–5195–2]

Clean Air Act Approval and Promulgation of Revisions to Prevention of Significant Deterioration of Air Quality Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) submitted by the State of Mississippi to include modifications of the state prevention of significant deterioration of air quality regulation to update the adoption by reference in Regulation APC–S–5, of the amendments and revisions to the federal regulations promulgated in 40 CFR 52.21 and 51.166 as of the date of State adoption of this revision. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A description of the revision and a more detailed rationale for the approval is set forth in the direct final rule, and the public should refer to that notice for more information. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule.

DATES: To be considered, comments must be received by June 5, 1995.

ADDRESSES: Written comments should be addressed to: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE, Atlanta, Georgia 30365.

Copies of the material submitted by the State of Mississippi may be examined during normal business hours at the following locations:

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

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Mississippi Department of Environmental Quality, P.O. Box 10385, Jackson, Mississippi 39289–0385.

FOR FURTHER INFORMATION CONTACT: Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365. The telephone number is 404 347–3555 ext. 4195.

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

Dated: April 12, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–11047 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH54–1–6164b, FRL–5201–3]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the redesignation request and maintenance plan for the Dayton-Springfield, Ohio area as a revision to Ohio's State Implementation Plan (SIP) for ozone. In the final rules section of this **Federal Register**, the USEPA is approving the State's redesignation request and maintenance plan as a direct final rule without prior proposal because USEPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA receives comments adverse to or critical of the approval, USEPA will withdraw the approval before its effective date by publishing a subsequent **Federal Register** document which withdraws the direct final rule. All public comments received will then be addressed in a subsequent final rule based on this proposed rule. USEPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this action must be received by June 5, 1995.

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

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Angela Lee, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

Dated: March 14, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–10973 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 52 and 81

[OH78–1–6969; FRL–5202–9]

Approval and Promulgation of Implementation plans and Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Ohio U.S. Environmental Protection Agency (USEPA) has requested the redesignation of the Cincinnati area (Hamilton, Clermont, Butler, and Warren Counties) from moderate nonattainment to attainment for ozone; and Clinton County from transitional nonattainment to attainment. The requests were received on November 15, 1994. Before the Cincinnati request can be approved through final rulemaking, several State Implementation Plan (SIP) revisions must be approved. The USEPA is separately rulemaking on Ohio SIP revisions involving volatile organic compounds (VOC) Reasonable Available Control Technology (RACT) rules, the 1990 Base-year Inventory, the section 182(f) nitrogen oxides (NO_X) RACT waiver request, the 182(b)(1) reasonable further progress plan, and the 182(b)(4) inspection and maintenance plan. Upon final approval of these plans, the Cincinnati nonattainment area will have met all of the requirements for redesignation specified under section 107(d)(3)(E). The approval of the Clinton County request is not contingent upon separate rulemaking action by USEPA. The USEPA is proposing approval of the redesignation request and maintenance plan for Butler, Hamilton, Warren, Clermont, and Clinton Counties in Ohio.

DATES: Comments on this redesignation and on the proposed USEPA action must be received by June 5, 1995.

ADDRESSES: Written comments should be addressed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following location: Regulation Development Section, Air Enforcement Branch (AE–17J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randy Robinson, Air Enforcement Branch, Regulation Development Section (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 353–6713.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

The Ohio Environmental Protection Agency (OEPA) has requested the redesignation of the Ohio portion of the Cincinnati Area (including the counties of Hamilton, Clermont, Butler, and Warren) from nonattainment to attainment for ozone. The Cincinnati moderate nonattainment area also includes the Kentucky counties of Boone, Campbell, and Kenton. These counties are being addressed in separate rulemaking. The OEPA is also requesting the redesignation of Clinton county from transitional nonattainment to attainment. The USEPA received both requests for redesignation to attainment on November 15, 1994. Public hearing and response to comment information was received on February 24, 1995.

Under Section 107(d) of the 1977 amended Clean Air Act, the USEPA promulgated the ozone attainment status for each geographic area of the country. All counties in the Cincinnati area were designated as an ozone nonattainment area in March 1978 (43 FR 8962). On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Pursuant to Section 107(d)(4)(A), Butler, Clermont, Hamilton, and Warren Counties were designated as moderate nonattainment areas, as a result of monitored violations of the ozone National Ambient Air Quality Standards (NAAQS) during the summer of 1988 (56 FR 56694, November 6, 1991). Clinton County did not experience a violation during the three year period from January 1, 1987 through December 31, 1989, and therefore, pursuant to section 185(A) of the CAAA, was designated as a transitional nonattainment area. A review of the Cincinnati area redesignation request is presented below, followed by a review of the Clinton County request.

II. Redesignation Review Criteria

The CAAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, Section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the National Ambient Air Quality Standard (NAAQS); (ii) The Administrator has fully approved the applicable implementation plan for the area under Section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The USEPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). Three key memoranda provide further guidance with respect to section 107(d)(3)(E) of the amended Act. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum). The second, dated September 17, 1993, was issued by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: State Implementation Plan (SIP) Requirements for Area Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992 (Shapiro Memorandum). The third, dated October 14, 1994, was issued by Mary Nichols, Assistant Administrator for Air and Radiation, Subject: Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum).

Analysis of Cincinnati Area Redesignation Request

A. The Area Must Have Attained the Ozone National Ambient Air Quality Standard (NAAQS)

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR 50.9, based on three

complete, consecutive calendar years of quality assured monitoring data. The data that are used should be the product of ambient monitoring that is representative of the area believed to have the highest concentration. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1.05 at any site under consideration. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR § 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

The OEPA submitted ozone monitoring data for the April through October ozone season from 1976 to 1994. The majority of recent exceedances occurred during 1988. To demonstrate monitored attainment with the standard, the OEPA submitted ozone air quality data for the years 1992 through 1994. This data has been quality assured and is recorded in AIRS. No violations were recorded during this time three-year time period.

The Cincinnati nonattainment area, including the Kentucky counties of Boone, Campbell, and Kenton, contains eleven monitors measuring ambient concentrations of ozone. The monitors and the number of exceedances for 1992 through 1994 are detailed in the technical support document. The site with the greatest number of expected exceedances is in Warren County with 0.67 annual average expected exceedance. The area is currently attaining the standard.

B. The Area Must Have a Fully approved State Implementation Plan (SIP) Under Section 110(k)

The counties of the Cincinnati moderate nonattainment area were designated nonattainment for ozone in March 1978, based on monitored violations. Additional monitored violations in 1983 caused USEPA to propose to disapprove the nonattainment SIP submitted in 1982 by OEPA and to require a revised SIP and attainment demonstration by 1987. Monitored violations occurred again in the Cincinnati area during the summer of 1988.

The CAAA provided that any area designated nonattainment as of November 15, 1990, would remain nonattainment and would be classified in one of five categories, based on the severity of the monitored design concentration value. The Cincinnati area, including the counties of Butler, Hamilton, Clermont, and Warren, was classified as a moderate nonattainment area and as a result must submit a revised SIP which meets the requirements of the Clean Air Act Amendments and demonstrates attainment with the ozone standards.

The Shapiro memorandum, cited above, provides guidance on programs that must be in the SIP before the redesignation request can be approved. The memorandum states that for redesignation, the States must adopt and provide for implementation of all the programs that were due by the date of the redesignation request. Consequently, a modeled attainment demonstration is not required in the Cincinnati area because the redesignation request was submitted before the attainment demonstration due date.

Section E of this notice discusses the requirements under section 110 and Part D of Title 1 of the CAAA. As discussed in that section, USEPA is currently rulemaking on the Volatile Organic Compounds (VOC) RACT rules and the 15 Percent (%) Rate of Progress Plan. Approval of those submittals, along with the emissions inventory, NO_x RACT waiver, and the I/M plan, will provide the area with a fully approved SIP at the time of final rulemaking on this redesignation request. All of the above program submittal deadlines preceded the Cincinnati redesignation request.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State should estimate the percent reduction from the year that was used to determine the design value for designation and classification achieved from Federal measures and control measures that have been adopted and implemented by the State. Emission rates, production capacities and other information should be used in the estimation. Sources should be assumed to operate at permitted or historic peak levels unless evidence is presented that such an assumption is unrealistic.

The OEPA submittal documents reductions in emission from 1990 to 1993. The year 1988 was the year which determined the design value and should have been the year from which reductions were calculated. This comment was made to OEPA in a January 6, 1995, letter from William L. MacDowell, Section Chief, Regulation Development Section, Region 5, to Mary Cavin, Hearing Clerk, OEPA. The OEPA responded that the result of using 1988 instead of 1990 as the base year would be that a greater reduction of emissions would have been calculated. The USEPA agrees that the use of 1988 data would not have affected the conclusion that the reductions in emissions from permanent and enforceable programs have resulted in improved air quality in the area and therefore accepts the reductions as calculated.

The OEPA submittal states that the 1993 emissions inventory is reflective of attainment conditions. The OEPA states that the reductions in emissions from the base year are achieved from the implementation of two federal programs; lower fuel volatility and the Federal Motor Vehicle Control Program (FMVCP). These programs are permanent and federally enforceable. The motor fuel volatility Phase I standards became effective nationwide in the summer of 1989, and established a volatility limit in the Cincinnati area of 10.5 pounds per square inch Reid Vapor Pressure (RVP). The RVP was further lowered in 1992 to 9.0 pounds per square inch. The total reduction in mobile source VOC emissions in the four Ohio Counties of the Cincinnati area, from 1990 to 1993 was 40 tons per day. These reductions were quantified using the MOBILE5A model.

From the years 1990 to 1993, area source and point source VOC emissions increased slightly, by 0.7 tons per day (tpd) and 1.9 tpd, respectively. Area sources were assumed to grow, based on historical population growth as interpolated by Bureau of Economic Analysis (BEA) data for the years 1988 to 1995 and on industrial employment data. Point source emissions for 1990 were developed from reports submitted to the Cincinnati Department of Environmental Services by facilities with actual combined VOC emissions of 10 tons per year or more. The following table shows combined Butler, Warren, Hamilton, and Clermont County VOC emissions for area, point, and mobile sources from 1990 to 1993.

	1990	1993
Area(TPD)	69.0	69.8
Point	70.9	72.8
Mobile	125.8	85.3
Total	265.7	227.9

The State has shown that actual total VOC emissions were reduced by about 38 tons per day from 1990 to 1993; due exclusively to mobile source reductions. Although the State did not calculate reductions based on a design year (i.e.,1988) emissions inventory, the demonstration that was submitted is adequate to show that actual reductions of VOC emissions have occurred in the area. The reduction in emissions shown in the submittal has been reasonably attributed to two programs: lower fuel volatility and the Federal Motor Vehicle Control Program. Both of the programs result in permanent and enforceable reductions in VOC emissions, and, therefore, the requirement of section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA defines requirements for maintenance plans. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. There are five core provisions which the maintenance plan should address: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment inventory should identify the level of emissions in the area which is sufficient to attain the ozone NAAQS and should include the emissions during the time period associated with the monitoring data showing attainment. Maintenance is demonstrated by showing that future emissions will not exceed the level of the attainment inventory. Modeling may also be used to show that the future combination of sources and emission rates will not cause a violation of the NAAQS. The maintenance plan must also provide for continued operation of an appropriate air quality monitoring network to verify attainment status of the area. The plan must indicate how the State will track the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures to promptly correct any violation of the ozone NAAQS that occurs after redesignation of the area to attainment.

Attainment Inventory

The Cincinnati area submittal contained inventories of 1990 actual VOC emissions from stationary, area, and mobile sources. The year 1990 was selected as the base year and used to project emissions to future years. The 1993 emissions inventory is considered as the attainment year inventory because no ozone violations have occurred since 1991, and the 1993 projections were performed per USEPA guidance. The approvability of the emission inventories will be addressed in a separate rulemaking. However, Federal approval of the Cincinnati nonattainment region emission inventories is needed before the redesignation request can be approved.

Maintenance Demonstration

The Cincinnati area submittal shows projected VOC, NO_X, and CO emissions from the 1990 base year for the years 1993, 1996, 1999, 2002 and 2005. The projections show that the level of emissions established for the attainment year inventory will not be exceeded. Base year and projected emission inventories were presented for the seven counties that comprise the interstate Cincinnati moderate nonattainment area. The following tables list the VOC, NOx , and CO emissions for the base year, final year and interim years for only the Ohio portion of the inventory.

Summary of VOC Emissions (tons/day)

	1990 Base	1993 Attain	1996 Proj.	1999 Proj.	2002 Proj.	2005 Proj.
Point	70.9	72.8	74.9	77.0	79.2	81.4
Area	69.0	69.8	70.7	71.4	72.3	73.1
Mobile	125.8	85.3	67.1	49.6	41.6	36.8
Totals	265.7	227.9	212.7	198.0	193.1	191.3

Summary of CO Emissions (tons/day)

Point	88.6	88.5	88.3	88.2	88.1	87.9
Area	319.4	323.8	328.6	333.4	338.6	343.8
Mobile	793.2	629.5	529.0	325.7	263.9	226.0
Totals	1201.2	1041.8	945.9	747.3	690.6	657.7

Summary of NO_X Emissions (tons/day)

Point	280.0	279.4	279.0	278.6	278.3	277.6
Area	29.8	30.3	30.9	31.4	32.1	32.2
Mobile	130.7	115.6	101.3	84.4	72.0	65.5
Totals	440.5	425.3	411.2	394.4	382.4	375.3

The OEPA is revising the base year emission inventory numbers in response to comments made by USEPA. Although the revisions will change the base year and projected year emission totals, the changes are not expected to affect the results of the maintenance demonstration. The revised base year, attainment year, and projected emissions will be presented in the final rule.

Emission Projections

Projections of stationary source emissions through year 2005 were developed based on data provided by the Bureau of Economic Analysis (BEA), United States Department of Commerce, showing manufacturing earnings by industry. An annual growth factor was derived from this data and that growth factor was used to determine future year inventories. The base year inventory was developed through reports submitted by facilities with actual combined VOC emissions of 10 tons per year or more. The 1990 base year inventory reflects tons per typical summer day emissions as well as an 80 percent rule effectiveness assumption.

The area source emissions inventory includes sources too small to be handled individually in the point source inventory. The emissions in the area source inventory were reported in tons per typical summer day. Projections of area source emissions for most source categories was based on population data supplied by the Ohio Data Users Center: Ohio Department of Development. Some source categories (such as degreasing operations, construction and industrial equipment, and auto painting/traffic lines) used industrial employment, from BEA data, as the growth indicator. State gasoline consumption was used as a growth indicator to project emissions from gasoline distribution.

Mobile source emissions inventories were generated by applying the emissions factors from USEPA's Mobile5A emissions model to the projected Vehicle Miles Travelled (VMT) in the Cincinnati area counties. The VMTs for the 1990 base year were based on the TRANPLAN model, which utilizes actual traffic counting. Forecasts of VMTs to the year 2005 relied on the development of future highway networks, future forecasts of socio-economic data, and travel patterns in the Cincinnati area. VMTs are projected to increase 17 percent by the year 2005 from the 1990 base year. The VOC and NO_X emissions projected for the year 2005 in the table presented earlier are for purposes of transportation conformity.

Runs of Mobile5A for the years 1990, 1993, 1996, 2000, and 2005 were conducted using the following input file categories: hourly temperature data, hourly hot/cold start percentage by roadway type, hourly vehicle mix by roadway type, hourly directional splits by roadway type, summer factors by roadway type, and speed by roadway type. Several programs account for the significant reductions in mobile emissions predicted through the year 2005. These programs, which are Federally approved or in the process of being approved, include the enhanced inspection and maintenance, State II vapor recover, on-board vapor recovery, FMVCP, and lower fuel volatility. Incorporation of enhanced inspection and maintenance into the Mobile5A modeling is initiated in 1996. The Stage II vapor recovery system (VRS) is fully implemented in 1995, while the on-board vapor recovery system begins in 1998. The on-board vapor recovery system applies to the four possible vehicle types; light duty gas, light duty truck 1 and 2, and heavy duty gas.

Monitoring Network

There are currently eleven monitors measuring ozone in the Cincinnati area, as described above. Three are operated by the State of Kentucky. Seven of the eight monitors located in the Cincinnati area are operated by the Cincinnati Department of Environmental Services. The remaining monitor is operated by the Southwest District Office of the OEPA. The Cincinnati Department of Environmental Services has committed to continue operating and maintaining its ozone monitoring network consistent with the Federal and State monitoring guidelines in order to continue to verify the attainment status of the area.

Contingency Plan

The contingency plan for the Cincinnati area contains three major components: Attainment tracking, contingency measures to be implemented in the event that a violation of the ozone NAAQS occurs in the Ohio/Kentucky Cincinnati region, and a mechanism with which to trigger the implementation of the contingency measures.

Two methods of attainment tracking will be utilized: (1) air quality monitoring using the existing ozone monitoring network, and (2) inventory updates on a regular schedule. Stationary, mobile, and area source inventories will be updated at a minimum of once every three years beginning with 1996. Area emission inventories will be updated using revised census data. Mobile source emission inventories will be updated using new VMT estimates and any new USEPA mobile emission models. Annual progress reports will summarize available VOC emissions data.

The contingency measures to be considered for implementation are listed below.

1. Lower Reid Vapor Pressure for gasoline
2. Reformulated gasoline program
3. Broader geographic coverage of existing regulations
4. Application of RACT on sources covered by new control technology guidelines issued in response to the 1990 Act Amendments
5. Application of RACT to smaller existing sources
6. Implementation of one or more transportation control measures sufficient to achieve at least a 0.5 percent reduction in actual areawide VOC emissions. The transportation control measures to be considered would include: (1) Trip reductions programs, including but not limited to employer-based transportation management programs, areawide rideshare programs, work schedule change, and telecommuting; (2) transit improvements; (3) traffic flow improvements; and (4) other measures
7. Alternative fuel programs for fleet vehicle operations
8. Controls on consumer products consistent with those adopted elsewhere in the United States
9. VOC offsets for new or modified major sources
10. VOC offsets for new or modified minor sources
11. Increased ratio of VOC offsets required for new sources
12. Requirement of VOC controls on new minor sources.

Selection of one or more of the contingency measures will be based on various considerations including cost-effectiveness, VOC reduction potential, economic and social consideration, and other factors the State determines to be appropriate.

Consideration and selection of one or more of the contingency measures will take place in the event the ozone NAAQS is violated. Initially, the State will conduct an analysis to determine the level of control measures needed to assure expedient future attainment. If a subsequent violation of the ozone NAAQS occurs after implementation of the VOC control measures, NO_X RACT will be activated. Contingency measures will be implemented according to the following schedule:

Activity	Completion time after triggering event
Verify a violation has occurred.	1 month.
Identify VOC plan and submit schedule for implementation.	3 months.
Implement VOC control program.	12 months.
	Completion time second triggering event/post VOC control plan
Verify a violation has occurred.	1 month.
Submit schedule for implementation of NO_X RACT.	3 months.
Implement NO_X RACT.	18 months.

Reformulated gasoline and low RVP gasoline would not be able to be implemented as contingency measures by the State of Ohio unless the State first requested and received from USEPA a waiver of federal preemption under section 211(c)(4) of the CAA. However, in light of the State's listing of other potential contingency measures

and the State's commitment to implement contingency measures within 12 months of a violation, the identification of reformulated gasoline and low RVP gasoline does not detract from the approvability of the contingency plan.

The Ohio submittal adequately addresses the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and therefore, satisfies the maintenance plan requirement in section 107(d)(3)(E)(iv).

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 107(d)(3)(E) requires that, for an area to be redesignated, an area must have met all applicable requirements under section 110 and Part D. The USEPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

Section 110: General Requirements for Implementation Plans

Section 110(a)(2) of Title I of the CAAA lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for Part C (PSD) and D (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Cincinnati area SIP was reviewed to ensure that all requirements under the amended Act were satisfied. USEPA has determined that the Cincinnati area SIP is consistent with the requirements of section 110 of the amended Act.

Part D: General Provisions for Nonattainment Areas

Before the Cincinnati area may be redesignated to attainment, it must have fulfilled the applicable requirements of part D. Under part D, an area's classification determines the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble for the Implementation of Title 1, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). The Cincinnati area was classified as moderate. Therefore, in order to be redesignated, the State must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176, as well as the applicable requirements of subpart 2 of part D.

Section 172(c) Requirements

The State redesignation request for Cincinnati has satisfied all of the relevant submittal requirements under section 172(c) necessary for the area to be redesignated to attainment. Some components have not yet completed regulatory review. Approval of all required SIP revisions is necessary before the redesignation request can be approved. The reasonable further progress (RFP) requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Cincinnati area has already demonstrated monitored attainment of the ozone NAAQS.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The State has submitted such an inventory under section 182(a)(1). It is currently being reviewed for approvability.

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The USEPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment''. The State of Ohio has demonstrated that the Cincinnati area will be able to maintain the standard without part D NSR in effect, and, therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request for Cincinnati. The State's Prevention of Significant Deterioration (PSD) program will become effective in the Cincinnati area upon redesignation to attainment.

Subpart 2 Section 182 Requirements

The Cincinnati area is classified moderate nonattainment; therefore, part D, subpart 2, section 182(b) requirements apply. In accordance with guidance presented in the Shapiro memorandum, the requirements which came due prior to the submission of the request to redesignate the Cincinnati area must be fully approved into the SIP before the request to redesignate the area to attainment can be approved. Those requirements are discussed below:

(a) 1990 Base Year Inventory

The 1990 base year emission inventory was due on November 15, 1992. It was submitted to USEPA on March 14, 1994. USEPA is currently reviewing the base year inventory.

(b) Emission Statements

The emission statements SIP was due on November 15, 1992. It was submitted to the USEPA on March 18, 1994. The USEPA approved this SIP revision through a direct final rulemaking action published on October 13, 1994 (59 FR 51863). This approval became effective on December 12, 1994.

(c) 15% Plan

The 15% Rate of Progress plan for VOC reductions was required to be submitted by November 15, 1993, and, therefore, is applicable to the Cincinnati Moderate Nonattainment area. The 15% plan was submitted to USEPA on March 14, 1994, and is currently under review. This plan must be approved before a redesignation to attainment can be finalized.

(d) RACT Requirements

SIP revisions requiring RACT for three classes of VOC sources are required under section 182(b)(2). The categories are:

(i) All sources covered by a CTG document issued between November 15, 1990 and the date of attainment. The USEPA has issued a CTG document in which it lists 11 CTG's that are planned to be issued in accordance with section 183. The USEPA has also promulgated a CTG document entitled ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation

Operations Processes in the Synthetic Organic Chemical Manufacturing Industry'', August 1993. However, the Cincinnati redesignation request was submitted before the November 15, 1994 (57 FR 18070), due date for RACT rule submission for the 11 CTG's and the March 23, 1995 (59 FR 13717), due date for the more recent CTG. Therefore, this requirement is not applicable.

(ii) All sources covered by a Control Technology Guideline (CTG) issued prior to November 15, 1990. The State has stated that it has adopted rules requiring RACT for sources for which a CTG has been issued.

(iii) All other major non-CTG stationary sources. The non-CTG rules were due by November 15, 1992, and apply to the Ohio submittal. The USEPA is currently reviewing non-CTG rules submitted by Ohio.

(e) Stage II Vapor Recovery

Section 182(b)(3) requires States to submit Stage II rules no later than November 15, 1992. The Ohio Stage II rules were submitted as a SIP revision on June 7, 1993. On October 20, 1994, the USEPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II (58 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), USEPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the USEPA guidance document for such programs entitled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' Only those Stage II provisions previously approved by USEPA are part of the Cincinnati area maintenance plan.

The Shapiro Memorandum states that once onboard regulations (FMVCP) are promulgated, the Stage II regulations are no longer applicable for moderate ozone nonattainment areas. The USEPA promulgated onboard rules in February 1994; therefore, pursuant to section 202(a)(6) of the CAAA, Stage II is no longer required. However, the State has opted to include reductions in VOCs from the Stage II program as part of the maintenance plan and the 15% Rate of Progress plan.

(f) Vehicle Inspection and Maintenance (I/M)

The USEPA's final I/M regulations in 40 CFR Part 85 require the State to submit to the USEPA a fully adopted I/M program by November 15, 1993. Ohio submitted the I/M rules on May 26, 1994. USEPA published a direct final approval of the rules on April 4, 1995. If the notice is not withdrawn due to adverse comments, the rules will become effective on June 3, 1995.

The legislation authorizing the State to establish an I/M program also allows the option of implementation of an enhanced I/M program into an area's maintenance plan. The State is including enhanced I/M as a part of the maintenance plan and 15% plan for the counties of Butler, Clermont, Hamilton, and Warren. Consequently, approval of the Cincinnati area redesignation request is contingent upon USEPA final approval of the I/M regulation. A withdrawal of the direct final rulemaking for I/M would affect the approval of the Cincinnati redesignation.

(g) 1.15 to 1.0 Offset

Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The Mary Nichols memorandum states, under certain circumstances, that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation. As the State has demonstrated that maintenance can be maintained without NSR offsets in effect, the State need not have a fully approved NSR program for the Cincinnati area to be redesignated. Upon redesignation to attainment, the sources will become subject to PSD requirements and offsets will no longer apply. Emissions will continue to be tracked on an annual basis.

(h) NO_X Requirement

Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. The Administrator has proposed such a determination for the Cincinnati nonattainment area as requested by the State of Ohio (60 FR 3361). If the NO_X waiver is approved as a final rule, the State of Ohio need not impose the NO_X control measures in section 182(f) for the Cincinnati area to be redesignated. However, if the NO_X waiver is not approved, the NO_X requirements must be met for the area to be redesignated from nonattainment to attainment. If a violation is monitored in the Cincinnati area (including the counties of Butler, Hamilton, Warren, Clermont, and Clinton in Ohio and Boone, Campbell, and Kenton in Kentucky), Ohio has committed to adopt and implement NO_X RACT rules as a contingency measure to be implemented upon a violation of the ozone NAAQS which occurs after initial contingency measures are in place.

Review of Clinton County Redesignation Request

Clinton County, located to the northeast of the City of Cincinnati, is classified as a transitional area because it was designated nonattainment prior to enactment and did not have a monitored ozone violation between the period starting January 1, 1987 and ending December 31, 1989. The OEPA must demonstrate that the Clinton County portion of the submittal meets the five redesignation requirements specifically identified in Section 107(d)(3)(E). The requirements are listed below.

A. The Area Must Have Attained the Ozone NAAQS

Monitoring data was submitted for Clinton County for the years 1977 through 1994. The monitor recorded 5 exceedances of the ozone NAAQS in 1983 and single exceedances in the years 1988, 1989, and 1993. The data is available in AIRS and adequately demonstrates that Clinton County is attaining the NAAQS.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k)

Clinton County is a transitional area and therefore is only required to submit an emissions inventory as a SIP revision. This rulemaking is proposing approval of the emissions inventory as part of the maintenance plan and redesignation request for Clinton County. The Calcagni memorandum allows approval action on the SIP elements and the redesignation request to occur simultaneously. Therefore, the area has satisfied this requirement.

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

The State has shown that in Clinton County, actual total VOC emissions were reduced by about 2 tons per day from 1990 to 1993; due exclusively to mobile source emission reductions. The mobile emission reductions were the result of the lower fuel volatility program and the FMVCP. Both of these programs are Federally enforceable and permanent.

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175(A)

The OEPA has met the applicable requirements by submitting a

maintenance plan consisting of emission inventories for area, point, and mobile sources of VOC, NO_X, and CO. The maintenance plan also consists of a contingency plan with specific contingency measures to be implemented in accordance with a specified schedule.

The contingency measures and schedule presented in Section II.D. above also apply to Clinton County. Additionally, a monitored violation in Clinton County would trigger contingency measures in the counties comprising the Cincinnati moderate nonattainment area.

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

The USEPA has interpreted section 107(d)(3)(E)(ii) to mean that the applicable requirements that an area must satisfy before it can be redesignated are the requirements under section 110 (regarding general provisions in a SIP) and under Part D (regarding the requirements for nonattainment area plans) that were due before the request was submitted. The General Preamble details the requirements for transitional areas. Those requirements and their applicability to Clinton County are presented below.

(1) RACT/Reasonably Available Control Measure (RACM)

In order to satisfy this requirement, transitional areas must show that any RACT deficiencies regarding enforceability of an existing rule are corrected. Clinton County was not included in the post 1987 SIP call letters issued by USEPA to OEPA (dated May 26, 1988, and November 8, 1989) and therefore was never cited as having RACT deficiencies. Thus, Clinton County has satisfied this requirement.

(2) Attainment Demonstration

Section 182(a)(4) specifically exempts marginal areas from any attainment demonstration requirement. In accordance with the General Preamble, this exemption is also reasonably applied to transitional areas since such areas are not violating the standard. Therefore, Clinton County is not subject to this requirement.

(3) RFP

Clinton County is already in attainment. This requirement is not applicable.

(4) Emissions Inventory

An emissions inventory is required under section 172(c)(3). Clinton County submitted an emissions inventory for VOC's, NO_X, and CO. The inventory was used to develop a maintenance plan under section 175(A).

Emission inventories are supplied for Clinton County for the years 1990 to 2005. The attainment year is considered to be 1993. The mobile source emissions were determined using the MOBILE5A model. The emission factors calculated by the model were multiplied by the area VMT's. Area source emissions were estimated using growth indicators as recommended by USEPA. These indicators included population growth, industrial activity, and gasoline consumption. There are no major point sources of VOC, NO_X, or CO in Clinton County. The reduction in mobile source emissions from the 1990 base year to the 1993 attainment year are attributed to the implementation of two federal programs: Lower fuel volatility and the FMVCP. The following table shows the Clinton County inventory figures.

SUMMARY OF VOC EMISSIONS (TONS/DAY)

	1990 Base	1993 Attain	1996 Proj.	1999 Proj.	2002 Proj.	2005 Proj.
Point	0.0	0.0	0.0	0.0	0.0	0.0
Area	11.3	11.33	11.36	11.39	11.42	11.45
Mobile	5.04	3.27	2.82	2.80	2.31	2.04
Totals	16.34	14.60	14.18	14.19	13.73	13.49
Summary of CO Emissions (tons/day)						
Point	0.0	0.0	0.0	0.0	0.0	0.0
Area	24.2	24.3	24.4	24.5	24.7	24.8
Mobile	29.2	20.1	17.3	16.9	14.4	13.3
Totals	53.4	44.4	41.7	41.4	39.1	38.1
Summary of NO_X Emissions (tons/day)						
Point	0.0	0.0	0.0	0.0	0.0	0.0
Area	1.62	1.63	1.64	1.64	1.65	1.66
Mobile	4.80	4.19	3.69	3.65	3.13	2.73
Totals	6.42	5.82	5.33	5.29	4.78	4.39

(5) New Source Review

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The USEPA has determined that areas being redesignated need not comply with the requirement that a New Source Review (NSR) program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D NSR in effect. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment''. The State of Ohio has demonstrated that Clinton County will be able to maintain the standard without part D NSR in effect, and, therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request for Cincinnati. The State's Prevention of Significant Deterioration

(PSD) program will become effective in Clinton County upon redesignation to attainment.

(6) Monitoring

Nonattainment areas must meet the applicable monitoring requirements of section 110(a)(2). Clinton County has met the monitoring requirement by conducting ambient air monitoring to verify the attainment status of the area and by making the data available in AIRS.

(7) Contingency Measures

The contingency measures presented in Section II.D. above also apply to Clinton County. Additionally, a monitored violation in Clinton County would trigger contingency measures in the counties comprising the Cincinnati moderate nonattainment area.

The Clinton County portion of the OEPA submittal demonstrates that: (i) The area has attained the NAAQS; (ii) the SIP has been fully approved under section 110(k); (iii) the improvement in air quality is due to permanent and enforceable measures; (iv) the maintenance plan meets the requirements of section 175(A); and (v) the area has met all applicable requirements under section 110 and Part D. Therefore, the OEPA has demonstrated that Clinton County satisfies the CAAA requirements for redesignating a nonattainment area to attainment.

Transport of Ozone Precursors to Downwind Areas

Preliminary modeling results utilizing USEPA's regional oxidant model (ROM) indicate that ozone precursor emissions from various States west of the ozone transport region (OTR) in the northeastern United States contribute to increases in ozone concentrations in the OTR. The State of Ohio has provided documentation that VOC and NO_X emissions in the Cincinnati nonattainment area are predicted to remain below attainment levels for the next ten years. Should emissions exceed attainment levels, the contingency plan will be triggered. In addition, eight years after redesignation to attainment, Ohio is required to submit a revision to the maintenance plan which demonstrates that the NAAQS will be maintained until the year 2015. The USEPA is currently developing policy which will address long range impacts of ozone transport. The USEPA is working with the States and other organizations to design and complete studies which consider upwind sources and quantify their impacts. The USEPA intends to address the transport issue through Section 110 based on a domain-wide modeling analysis.

III. Proposed Rulemaking Action and Solicitation of Public Comment

The State of Ohio has met the submission requirements of the CAAA for revising the Ohio ozone SIP. The USEPA is proposing approval of the redesignation of the Cincinnati moderate nonattainment area, consisting of the counties of Butler, Warren, Clermont, and Hamilton, to attainment for ozone. In addition, USEPA is proposing approval of the redesignation to attainment for Clinton County. The USEPA is also proposing approval of the maintenance plan for each area into the ozone SIP. As noted earlier, final approval of the Cincinnati area request is contingent upon full approval of the required VOC RACT rules, Ohio's I/M SIP revision, the 15% Rate of Progress Plan, Cincinnati's base-year emissions inventory, and the NO_X waiver for Cincinnati.

Public comments are solicited on USEPA's proposed rulemaking action. Public comments received by June 5, 1995 will be considered in the development of USEPA's final rulemaking action.

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

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

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

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

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, USEPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of the State implementation plan or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The rules and commitments being proposed for approval in this action may bind State, local, and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the rules and commitments being proposed for approval by this action will impose or lead to the imposition of any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. The USEPA has also determined that this action does not include a mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects

40 CFR Part 52

Air pollution control, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Air pollution control.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 21, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–11035 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 950410098–5098–01; I.D. 030395A]

RIN 0648–AH19

Taking and Importing of Marine Mammals; Deterrence Regulations and Guidelines

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Marine Mammal Protection Act (MMPA) Amendments of 1994 (the Amendments) provided new authority to citizens of the United States to deter marine mammals from: Damaging fishing gear and catch; damaging private property; endangering public safety; or damaging public property. The Amendments require NMFS to publish a list of guidelines for use in safely deterring marine mammals and to prohibit deterrence measures that have a significant adverse impact on marine mammals. This proposed rule sets forth preliminary versions of the guidelines and prohibitions, and seeks public comment upon which to refine them.

DATES: Comments must be received no later than July 5, 1995.

ADDRESSES: Written comments on the proposed rule should be addressed to Dr. William W. Fox, Jr., Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226. A copy of the Environmental Assessment (EA) and list of experts may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Tom Eagle or Ken Hollingshead Office of Protected Resources at (301) 713–2322; Doug Beach, Northeast Regional Office at (508) 281–9254; Jeff Brown, Southeast Regional Office at (813) 893–3366; Irma Lagomarsino, Southwest Regional Office at (310) 980–4020; Joe Scordino, Northwest Regional Office at (206) 526–6143; or Steve Zimmerman, Alaska Regional Office at (907) 586–7510.

SUPPLEMENTARY INFORMATION:

Background

The 1994 Amendments to the MMPA amended section 101(a)(4) to authorize fishers to deter marine mammals from damaging fishing gear or catch, property owners to deter marine mammals from damaging property, government officials to deter marine mammals from damaging public property, and anyone to deter marine mammals from endangering personal safety, so long as such acts of deterrence do not result in the serious injury or mortality of a marine mammal. Section 101(a)(4) of the MMPA directs the NMFS to develop and publish guidelines for use in safely deterring marine mammals and to prohibit deterrence measures determined to have a significant adverse effect on the animals. Section 101(a)(4)(B) directs NMFS to recommend specific measures which may be used to nonlethally deter marine mammals listed as endangered or threatened under the Endangered Species Act of 1973 (ESA). Such measures must be consistent with the provisions of the ESA. Actions to deter marine mammals consistent with such guidelines or specific measures would not be a violation of the MMPA.

The guidelines and prohibitions of this proposed rule would apply only with respect to marine mammal species which are not listed under the ESA. Specific recommended measures of nonlethal deterrence for ESA-listed species will be the subject of a separate rule. In the meantime, the use of deterrence measures upon marine mammal species listed under the ESA would remain prohibited.

Under the MMPA's section 114 Interim Exemption Program, commercial fishers were authorized, in certain situations, to deter marine mammals, to take them by harassment, and to intentionally kill them to protect fishing gear and catch. The 1994 Amendments to the MMPA changed this by prohibiting intentional killing and authorizing only acts of deterrence that do not cause serious injury or mortality to marine mammals. Furthermore, intentional lethal taking is now explicitly prohibited, except in the defense of human life, by new sections 101(c) and 118(a)(5) (see 60 FR 6036, February 1, 1995). Taken together, these new provisions effect a marked change in how some fisheries legally interact with marine mammals. The deterrence guidelines and prohibitions of this proposed rule would facilitate that change, allowing the use of effective deterrence measures while limiting injurious force.

New section 101(a)(4) of the MMPA authorizes the intentional interaction of private citizens with marine mammals. Recreational fishers may now deter marine mammals from damaging fishing gear or catch; property owners or their agents may now deter marine mammals from damaging their property; and the general public may now deter marine mammals from endangering personal safety, provided such deterrence does not cause a marine mammal's death or serious injury. The proposed guidelines and prohibited measures set forth activities that are not likely to cause a marine mammal death or serious injury and specifically prohibit activities determined, using the best scientific information available, to have a significant adverse effect on marine mammals. Actions by the public to deter non-ESA listed marine mammals consistent with such guidelines would not be a violation of the MMPA.

Because Federal, state, and local government officials had the authority to take marine mammals prior to the 1994 MMPA Amendments if doing so was for the protection or welfare of the animals or for the protection of the public health and welfare, and, because regulations governing such takings, which take into account the special training and experience levels of such officials, are already in place at 50 CFR 216.22, the proposed guidelines and prohibitions would not apply to acts of deterrence by government officials.

Guidelines

The proposed guidelines for use in safely deterring marine mammals would provide information on acceptable types of deterrence actions. The proposed guidelines incorporate caution and restraint in their deterrence methods and should minimize marine mammal injuries, if followed. The broad application of these proposed guidelines to a wide range of marine mammal species, interaction situations, and highly variable marine mammal behavioral reactions requires that the guidelines be general. They would give direction to ensure that deterrence actions do not result in the serious injury or death of a marine mammal.

''Passive'' deterrence measures, those that prevent a marine mammal from gaining access to property, people, or

fishing gear or catch, would be acceptable. Predator nets, rigid fencing, or other fixed barriers could be placed to exclude marine mammals from the immediate area of the subject property, persons, or fishing gear or catch. Such ''passive'' deterrence devices could be used, provided they do not increase the risk of entanglement or serious injury or death of a marine mammal.

''Preventive'' deterrence measures, those taken to dissuade a marine mammal from beginning to interact with property, people, or fishing gear or catch, would also be acceptable. For example, underwater acoustic devices that generate sounds known to be annoying to marine mammals could be used, as could certain light explosives to startle pinnipeds and to disrupt their approaches to property, people, or fishing gear or catch. Boat hazing (patrolling a net or an area in a small boat and deterring marine mammals with boat noise or by blocking their approach at the surface) could be used provided it did not result in the serious injury or death of a marine mammal.

Some ''reactive'' deterrents, those active measures taken with the intent of stopping a dangerous or damaging interaction, also would be acceptable. ''Reactive'' measures may require the most assertive deterrent actions. Some examples of generally acceptable reactive measures that could be used without causing an animal serious injury or death are prodding a marine mammal with blunt poles, pushing or herding an animal with plywood or canvas, or spraying water at an animal. Noisemakers and, for seals and sea lions, some light explosives, could also be used.

Four additional instructions would aid in the proper use of active measures in preventive or reactive situations. Acts of deterrence should not: (1) Result in a separation of a female marine mammal from its unweaned offspring; (2) break the skin of a marine mammal; (3) be directed at the head or eyes of a marine mammal; or (4) be used on pinnipeds hauled out on unimproved private property (i.e. a rock, ledge, or beach).

The deterrence measures described as examples above should be used with great caution. Any act of deterrence—including the example measures—that results in the serious injury or death of a marine mammal would be unacceptable and would violate the MMPA. Also, the above lists of examples should not be considered exhaustive. Any action that is not specifically prohibited and is consistent with the guidelines could be taken to deter marine mammals, so long as the action does not result in the serious injury or death of a marine mammal.

Prohibitions

Section 101(a)(4)(C) authorizes NMFS to prohibit such forms of deterrence that it determines, using the best scientific information available, after notice and opportunity for public comment, to have a significant adverse effect on marine mammals. NMFS proposes to prohibit the use of firearms or other devices that propel injurious projectiles. The use of explosives on cetaceans also would be prohibited, and only seal bombs or lesser explosives could be used for deterring pinnipeds. Seal bombs are explosive pest control devices (formerly designated by the Department of Transportation as Class C Pest Control Devices, now designated as Explosive Pest Control Device 1.4E NA–0412) in common use in some commercial fisheries. Further, the translocation of marine mammals—the capture and removal to another site—would be prohibited (except by Federal, state, and local officials as authorized by section 109(h) of the MMPA) as would the use of any substance intended for consumption by marine mammals. Specific justifications for the proposed prohibition of these deterrence measures follow.

Firearms and Devices That Propel Injurious Projectiles

NMFS proposes to prohibit from use as a marine mammal deterrent any firearm or any device used to propel an object designed for injurious effect including crossbows, spearguns, bangsticks, archery gear, harpoons, javelins, and spears. Firearms have been used to lethally deter depredating marine mammals in several fisheries; for example, killer whales in the Alaskan sablefish longline/setline fisheries, California sea lions in the Oregon/California salmon troll fishery, and harbor seals and gray seals in the Gulf of Maine salmon pen-aquaculture. Devices that propel injurious projectiles cannot generally be used for deterrence without having a significant adverse effect on the targeted marine mammals, and would therefore by prohibited.

Explosives

Explosives have been used to herd and deter marine mammals for at least 30 years. The most common explosives that have been used are seal bombs, which explode 5 to 8 meters below the water's surface, causing a pressure wave that startles the targeted animal and temporarily deters it from an area. In 1989, NMFS' Southwest Fisheries Science Center (SWFSC, 1990)[1] studied the potential for injury to dolphins from seal bomb use in the tuna purse seine fishery. The reports concluded that

> all types of seal bombs now known to be in use * * *are capable of inflicting slight to moderately severe injury when detonated at least within 0.5 m of a dolphin (Myrick et al., 1990b).

The most potent devices of this type could ''cause additional dolphin mortality when detonated at close range.'' (Myrick et al., 1990a).

Because of the known adverse effects and the difficulties in effectually modifying or regulating their use, seal bombs were prohibited from use in the eastern tropical Pacific yellowfin tuna purse seine fishery (55 FR 11580, March 29, 1990). For the same reasons, NMFS proposes to prohibit use of explosives against cetaceans in deterrence applications.

Numerous studies of deterrent effectiveness of seal bombs on pinnipeds have noted no apparent physical injury to a pinniped. While internal injuries and hearing loss would not be apparent, the return of normal seal and sea lion behavior and the failure of seal bombs as permanent deterrents indicate that the effect of the explosives is not significantly adverse (NMFS-Washington Department of Wildlife (WDW), 1989; Geiger and Jeffries, 1986; NMFS–WDW, 1994).

Available information also indicates that the effects of seal bombs on other species in the marine environment are insignificant. Two reports attribute a few fish mortalities to repeated use of explosives in a small area (Myrick et al., 1990a; NMFS–WDW, 1989). Explosives that detonate above the water's surface could result in minor disruptions in the behavior of birds and terrestrial species but these effects are considered to be negligible. Because there is no evidence that seal bombs and light fireworks used as deterrents present a significant adverse effect to pinnipeds or their environment, NMFS does not propose to prohibit their use on pinnipeds.

Translocation

Translocation (the capture and relocation), of wild marine mammals is a risky task undertaken occasionally by experts in animal stranding situations and infrequently in the course of research. Each phase of translocation—the capture, detainment, transport, and release—presents opportunity for significant behavioral and physiological injury to the animal. Therefore, NMFS

[1] Complete bibliographic information available in the Environmental Assessment and provided upon request. (See **ADDRESSES**.)

proposes to prohibit translocation as a method of deterrence.

Tainted Bait and Other Consumables

NMFS proposes to prohibit the use of tainted bait, poisons, or any other object intended for consumption by a marine mammal for the purpose of deterrence. The practice of taste aversion involves placing substances in bait fish to induce physical discomfort when it is consumed. Even for scientists and wildlife management professionals, control of dosage amounts is difficult to manage, and attempts by the general public would likely involve an injurious amount being ingested, causing a significant adverse effect. The tainted vomitus and excrement of marine mammals could also have some impact on the food web. Moreover, non-target species could not be kept from ingesting the substances. For these reasons, substances intended for consumption by a marine mammal would be prohibited as a method of marine mammal deterrence[2].

Consultation

Section 101(a)(4) of the MMPA requires NMFS to consult with appropriate experts on the implementation of the deterrence provisions. NMFS has compiled a list of individuals believed to have experience and knowledge of interactions with marine mammals and/or the use of deterrence devices. These individuals have been sent a copy of this proposed rule and invited by NMFS to submit comments on this proposed rule. The list of experts is available upon request (see **ADDRESSES**).

National Environmental Policy Act

The Assistant Administrator for Fisheries, NOAA (AA) has determined, based upon an EA prepared under the National Environmental Policy Act that implementation of these guidelines and prohibitions would not have a significant impact on the human environment. As a result of this determination, an environmental impact statement is not required. A copy of the EA is available upon request (see **ADDRESSES**).

Classification

This action has been determined to be not significant for purposes of E.O. 12866. In addition, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. Although some small waterfront and water-related businesses may be impacted by this rule, any economic impacts that accrue are expected to be positive since the rule, if implemented, will authorize property owners to legally take certain non-lethal measures against marine mammals in order to protect either private property, themselves or their customers.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: April 28, 1995.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In subpart C, § 216.29 is added to read as follows:

§ 216.29 Marine mammal deterrence.

(a) *Definitions*. For the purposes of this paragraph, ''catch'' means an aquatic species that is attached, hooked, ensnared, netted or otherwise under the control of the owner or operator of that fishing gear.

(b) *Deterrence measure authorization*. (1) Except as provided in paragraph (d) of this section, measures consistent with the general guidelines in paragraph (c) of this section, may be taken:

(i) By the owner of fishing gear or catch, either commercial or recreational, or an employee or agent of such owner to deter a marine mammal (other than species listed as endangered or threatened under the Endangered Species Act) from damaging gear or catch so long as such measures do not result in the death or serious injury of a marine mammal.

(ii) By the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal (other than species listed as endangered or threatened under the Endangered Species Act) from damaging private property so long as such measures do not result in the death or serious injury of a marine mammal.

(iii) By any person to deter a marine mammal from endangering personal safety so long as such measures do not result in the death or serious injury of a marine mammal. Furthermore, it shall not be a violation of the Act to take a marine mammal, even lethally, if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, provided such taking is reported to the Assistant Administrator within 48 hours.

(2) Federal, state or local government officials and employees may, consistent with § 216.22 of this chapter, deter a marine mammal from damaging public or private property.

(c) *Guidelines for safe deterrence*. The following measures are acceptable for the deterrence of marine mammals.

(1) Passive deterrence measures that preclude a marine mammal from accessing or interacting with persons, property, or fishing gear or catch may be used in the immediate vicinity of those persons, property, or fishing gear or catch that is to be protected. Nets, fences, or other types of physical barriers may be used provided the potential for marine mammals to become entangled is not increased.

(2) Active deterrence measures (including both ''preventive'' and ''reactive'' deterrence measures) that dissuade a marine mammal from interacting with persons, property, fishing gear or catch or that cause a marine mammal to cease its interaction with persons, property, or fishing gear or catch should not:

(i) Separate a female and its offspring;

(ii) Break the skin of an animal;

(iii) Be directed at the head or eyes of an animal; or

(iv) Be used on pinnipeds hauled out on unimproved private property. Active deterrence measures that may be used include, but are not limited to, mechanical or electrical noisemakers, water sprayed from a hose, blunt objects to prod animals, large shielding objects (wood, metal or fabric) to herd animals, and hazing actions by boat operators.

(d) *Prohibited deterrence measures*. The following forms of deterrence are prohibited from use for the deterrence of marine mammals:

(1) Use of any firearm, or other device used to propel an object resulting in, or possible to result in, injury including, without limitation, crossbows,

[2] In addition, the practice of feeding marine mammals in the wild is prohibited by regulation (50 CFR 216.3).

spearguns, bangsticks, archery gear, harpoons, javelins, and spears;

(2) Use of any explosive device for use on cetaceans (dolphins and whales), and any device of explosive power greater than that of a seal bomb (USDOT Explosive Pest Control Device 1.4E NA–0412, formerly Class C) for use on pinnipeds (seals and sea lions);

(3) Translocation of any marine mammal;

(4) Use of any tainted bait, poison, or any other object or substance intended for consumption by a marine mammal.

(e) *Acceptable measures for deterrence of ESA-listed species [Reserved].*

[FR Doc. 95–11138 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 60, No. 87
Friday, May 5, 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 COMMERCE

International Trade Administration

[A–588–6–04, A–588–054]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews, Termination in Part, and Intent To Revoke in Part

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

ACTION: Notice of preliminary results of antidumping duty administrative reviews, termination in part, and intent to revoke in part.

SUMMARY: In response to requests by the petitioner and one respondent, the Department of Commerce (the Department) has conducted administrative reviews of the antidumping duty order on Tapered Roller Bearings (TRBs) and Parts Thereof, Finished and Unfinished, from Japan (A–588–604), and of the finding on TRS, Four Inches or Less in Outside Diameter, and Corportae Thereof, from Japan (A–588–054). The review of the A–588–054 finding covers 3 manufacturers/exporters of the subject merchandise and 10 resellers/exporters of the subject merchandise to the United States during the period October 1, 1992 through September 30, 1993. Of these, two firms reported no shipments of the subject merchandise during the review period. The review of the A–588–604 order covers 5 manufacturers/exporters, 10 resellers/exporters, and 18 forging producers, and the period October 1, 1992 through September 30, 1993. Of these, five firms reported no shipments of the subject merchandise during the review period.

We have preliminarily determined that sales have been made below the foreign market value (FMV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties equal to the difference between the United States price (USP) and the FMV.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On October 18, 1993 (58 FR 53709), the Department published the notice of ''Opportunity to Request an Administrative Review'' for both TRB cases. The petitioner, the Timken Co. (Timken), and one respondent requested administrative reviews. We initiated the A–588–054 and A–588–604 administrative reviews for the period October 1, 1992 through September 30, 1993, on November 17, 1993 (58 FR 60600). The Department has now conducted these reviews for all firms except Koyo Seiko Company, Ltd. (Koyo), in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act). We will publish our preliminary results for this period with respect to Koyo at a later date.

Scope of the Review

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under the Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of this order, except for those manufactured by NTN Toyo Bearing Co., Ltd. (NTN). This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8484.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. These HTS item numbers and those for the A–588–054 finding are provided for convenience and Customs purposes. The written description remains dispositive.

On February 2, 1995, the Department published in the **Federal Register** its final scope determination regarding Koyo's rough forgings (60 FR 6519). Because we determined that these forgings were within the scope of the A–588–604 order on TRBs from Japan, we have considered such forgings within the scope of the A–588–604 order for these preliminary review results.

The period of review (POR) for the order and the finding is October 1, 1992 through September 30, 1993. These reviews cover TRB sales by four TRB manufacturers/exporters (NSK Ltd. (NSK), NTN, Nachi-Fujikoshi Corporation (Nachi), and Maekawa Bearing Mfg., Co., Ltd. (Maekawa)), and 10 resellers/exporters (Honda Motor Co., Ltd. (Honda), Fuji Heavy Industries, Ltd. (Fuji), Kawasaki Heavy Industries, Ltd. (Kawasaki), Yamaha Motor Co., Ltd. (Yamaha), Sumitomo Corporation (Sumitomo), Itochu Co., Ltd. (Itochu), Suzuki Motor Co., Ltd. (Suzuki), Nigata Converter Co., Ltd. (Nigata), Toyosha Co., Ltd. (Toyosha), and MC International (MC Int'l)). These reviews also cover U.S. sales of forgings by NTN and 18 other firms originally identified as Japanese forging producers (Daido Steel Co., Ltd., Asakawa Screw Co., Ltd., Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Ichiyanagi Tekko, Isshi Nut Industries, Kawada Tekko, Kinki Maruseo Nut Kogyo Kumiai, Kitazawa Valve Co., Ltd. (Kitz Corp.), Nittetsu Bolten (Nittetsu), Shiga Bolt, Shinko Bolt, Sugiura Seisakusho, Sumikin

Seiatsu, Toyo Valve Co., Unytite Fastener Mfg., Co., Ltd. (Unytite Kogyo), Gotoh Nut Seisakusho, and Kawada Tekkosho). We are terminating our review for 14 of these 18 firms as described below.

Best Information Available (BIA)

Total BIA

For the purposes of these preliminary results, in accordance with section 776(c) of the Tariff Act, for several firms we applied a rate based on BIA. We determined the rate to use as BIA according to the ''two-tiered'' BIA methodology outlined in Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.; Final Results of Antidumping Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders, 60 FR 10900, 10907 (February 28, 1995) (AFBs). Based on this methodology we used BIA as follows:

1. When a company refused to provide the information requested in the form required, or otherwise significantly impeded these proceedings, we used as total BIA the higher of (1) the highest rate found for any firm for the same class or kind of merchandise in the same country of origin in the less-than-fair-value (LTFV) investigation or prior administrative reviews; or (2) the highest rate found in this review for any firm for the same class or kind of merchandise in the same country of origin.

2. When a company substantially cooperated with our requests for information including, in some cases, verification, but failed to provide complete or accurate information in a timely manner or in the form required or was unable to substantiate it, we used as total BIA the higher of (1) the highest rate ever applicable to that firm for the same class or kind of merchandise from either the LTFV investigation or a prior administrative review (or, if the firm had never before been investigated or reviewed, the ''all others'' rate from the LTFV investigation), or (2) the highest calculated rate in this review for any firm for the class or kind of merchandise from the same country of origin. See AFBs and *Allied-Signal Aerospace Co.* v. *United States*, Court No. 94–1112 (June 30, 1994, CAFC).

Thus, for first-tier (non-cooperative) BIA in these reviews we have used for the A–588–604 review the highest calculated rate for any firm in the history of the order (*i.e.*, 40.37 percent, the rate for NSK in the 1988–89 A–588–604 review), and for the A–588–054 review we have used the highest calculated rate for any firm in the history of the A–588–054 finding (*i.e.*, 47.63 percent, the rate for Koyo in the 1987–88 A–588–054 review). Listed below is a company-by-company summary of the total BIA used in these reviews.

A. First-Tier (Non-Cooperative) BIA

(i) Yamaha, Toyosha, Nigata, and Suzuki: None of these firms responded to our questionnaire in either the A–588–054 or the A–588–604 review. Therefore, based on the above criteria, as first-tier BIA for each of these firms in the A–588–604 review, we used 40.37 percent, and for each of these firms in the A–588–054 review, we used 47.63 percent.

(ii) Nachi: Since Nachi did not respond to our questionnaire in the A–588–604 review, we applied to Nachi a first-tier BIA rate of 40.37 percent in that review.

(iii) Ichiyanagi Tekko, Nittetsu, and Sumikin Seiatsu: These three forgoing producers, which are involved only in the A–588–604 review, did not respond to our questionnaire. As a result, for each firm we used a first-tier BIA rate of 40.37 percent.

B. Second-Tier (Cooperative) BIA

Because Kawasaki submitted a majority of its information in an untimely manner and because its timely submitted information was an inadequate basis for analysis, we used a total BIA rate for Kawasaki for both reviews. However, because Kawasaki was not uncooperative, in that it supplied the Department with substantive responses to our questionnaires, we used a second-tier BIA rate. Because the highest rate for Kawasaki in any previous A–588–054 review was zero (0.0) percent and Kawasaki was not party to the LTFV investigation, we have used the highest calculated rate for any firm from this A–588–054 review as total BIA for Kawasaki (NSK's 11.67 percent). Because Kawasaki has never before been party to an A–588–604 review or the A–588–604 LTFV investigation, we have used, as cooperative BIA for Kawasaki in the A–588–604 review, the A–588–604 ''all others'' rate from the LTFV investigation of 36.52 percent.

No Shipments

Resellers

Three resellers, Honda, Fuji, and MC In'tl, made no shipments of A–588–604 subject merchandise during the review period. Furthermore, none of these three firms was a party to the A–588–604 LTFV investigation or any prior reviews of the A–588–604 case. Because their shipments have never been reviewed individually, we have not assigned an individual rate to any of these firms for the A–588–604 review. If any of these firms begin shipping subject merchandise at some future date, the entries will receive deposit rates attributable to the manufacturer(s) of the subject merchandise.

Manufacturers

Because Nachi and Maekawa did not make any shipments of merchandise subject to the A–588–054 case during the review period, their calculated rates from the last period in which they made shipments will continue to apply to A–588–054 merchandise (18.07 percent for Nachi and zero (0) percent for Maekawa). Maekawa also made no shipments of merchandise subject to the A–588–604 case during the review period. We have not assigned an individual rate to Maekawa, which was not a party to the LTFV investigation or any prior review of the A–588–604 case. If Maekawa, a manufacturer, were to begin shipping at some future date, the entries would receive the A–588–604 LTFV ''all others'' rate of 36.52 percent.

Concerning those firms described in Timken's initiation request as possible forging producers, only one of the 18 firms, Daido Steel Co., Ltd. (Daido), reported that it actually produced forgings used in the manufacture of TRBs. However, Daido also indicated that it did not sell these forgings to the United States, but rather only sold such merchandise to companies in Japan. Because this firm had no U.S. shipments of this merchandise during the review period and has never been involved in an A–588–604 review or the LTFV investigation, we have not assigned an individual rate to Daido for the A–588–604 reveiw. If Daido were to begin shipping at some future date, the entries would receive the A–588–604 LTFV ''all others'' rate of 36.52 percent.

Termination in Part

Twelve of the 18 producers with forging operations reported that they did not produce the forgings which have been found to be within the scope of the order, but rather only produced non-scope merchandise such as nuts, bolts, and valves. As a result, because these firms do not produce or sell subject merchandise, we are terminating the A–588–604 review for the following 12 firms: Asakawa Screw Co., Ltd., Fuse Rashi Co., Ltd., Hamanaka Nut Mfg. Co., Ltd., Isshi Nut Industries, Kawada Tekko, Kinki Maruseo Nut Kogyo Kumiai, Kitz Corp., Shiga Bolt, Shinko

Bolt, Sugiura Seisakusho, Toyo Valve Co., and Unytite Kogyo.

We initiated reviews (58 FR 60600) of two other supposed forging producers, Kawada Tekkosho and Gotoh Nut Seisakusho. We are also terminating the A–588–604 review of these two firms because Kawada Tekkosho is not a separate firm but simply another name for Kawada Tekko, and, as indicated in a December 1, 1993, letter from the petitioner, Gotoh Nut Seisakusho is no longer in business.

Our termination of the A–588–604 review for these 14 firms does not constitute a revocation of these firms from the order. If any of the above 14 firms ever becomes a manufacturer/exporter of TRBs or forgings used in the production of TRBs, its sales to the United States will be subject to the order.

Resellers/Shippers

Of the 11 resellers covered by these reviews, we have determined that Sumitomo and Itochu are mere shippers of the subject merchandise and do not warrant their own margins. Itochu and Sumitomo contract with larger Japanese companies/suppliers to ship TRBs from the suppliers to the suppliers' U.S. subsidiaries. Because these supplies knew at the time of sale to Itochu and Sumitomo that these TRBs were destined for the United States, and because Itochu and Sumitomo had no influence over the sales prices or quantities of these shipments, we have determined that the suppliers' rates, and not unique Sumitomo or Itochu rates, should be applied for cash deposit and appraisement purposes. See Antifriction bearings (Other than Tapered Roller Bearings) and parts thereof from Germany, et al.; Final Results of Antidumping Duty Administrative Review, 56 FR 31692, 31747 (July 11, 1991).

USP

The Department used exporter's sales price (ESP) for NSK, NTN, Honda, Fuji, and MC Int'l, and purchase price, as defined in section 772 of the Tariff Act, for NTN's sales to Caterpillar and certain of Fuji's sales to calculate USP. ESP was based on the packed, delivered price to unrelated purchasers in the United States. We made adjustments, where applicable, for foreign pre-sale inland freight, foreign inland freight, air freight, ocean freight, marine insurance, export inspection fees, brokerage and handling, U.S. inland freight, U.S. duty, commissions to unrelated parties, U.S. credit, discounts, rebates, sales allowances, billing adjustments, technical service expenses, warranties, packing expenses incurred in the United States, and indirect selling expenses (which include inventory carrying costs, warehouse transfer expenses, advertising, other U.S.-incurred selling expenses, and export selling expenses). For NTN, we also adjusted ESP for value added in further manufacturing, including an allocation of profit earned on U.S. sales.

NTN's and Fuji's purchase price sales were based on the sales price to the unrelated purchaser in the United States. We made adjustments to purchase price, where appropriate, for foreign pre-sale inland freight, foreign inland freight, ocean freight, marine insurance, brokerage and handling, U.S. duty, U.S. inland freight, export inspection fees, and rebates,

We also adjusted USP (purchase price and ESP) for taxes in accordance with our practice as outlined in Silicomanganese from Venezuela, Preliminary Determination of Sales at Less Than Fair Value, 59 FR 31204, June 17, 1994 (Silicomanganese).

No other adjustments were claimed or allowed.

FMV

Because the home market was viable for NTN, NSK, Honda, and Fuji, we compared U.S. sales with sales of such or similar merchandise in the home market.

In general, the Department relies on monthly weighted-average prices in the calculation of FMV. In consideration of the significant volume of home market sales involved in these reviews, consistent with section 777A of the Tariff Act, we used an average of respondents' home market sales for each review period. To determine whether an annual average was representative of the transactions under consideration, we performed the following three-step test (see AFBs). First, we compared the annual weighted-average home market price for each model with each of its 12 monthly weighted-average prices for each review period. We calculated the proportion of each model's sales for which the annual weighted-average price did not vary more than plus or minus 10 percent from the monthly weighted-average prices. Second, we compared the volume of sales of all models for which annual weighted-average prices did not vary more than plus or minus 10 percent from the monthly weighted-average prices with the total volume of sales of TRBs. If the annual weighted-average price of at least 90 percent of the sales of TRBs for a given firm did not vary more than plus or minus 10 percent from the monthly weighted-average price, we considered the annual weighted-average price to be representative of the transactions under consideration for that firm. Third, we tested whether there was any correlation between fluctuations in price and time for each model. Where the correlation coefficient was less than 0.05 (where a coefficient approaching 1.0 indicates a direct relation between price and time), we concluded that there was no significant relation between price and time. Because the annual weighted-average prices for TRBs sold by NSK, Fuji, MC Int'l and NTN in each case during the review period did not vary meaningfully from the monthly weighted-average prices of sales, and because there was no correlation between price and time, we considered the annual weighted-average prices for each review period to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by NSK, MC Int'l, and NTN on an annual weighted-average basis.

Because Honda sold all its TRBs to all its customers in the home market according to a single price list (which changed only once during the review period), it was unnecessary for us to calculate a single FMV for each model sold by Honda on an annual weighted-average basis.

Based on petitioner's allegations and the Department's previous determinations of sales made below the cost of production (COP), in accordance with section 773(b) on the Tariff Act, we determined that there were reasonable grounds to believe or suspect that, for this review period, NTN and NSK made sales of subject merchandise in the home market at prices less than the COP. As a result, we investigated whether NTN or NSK sold such or similar merchandise in the home market at prices below the COP. In accordance with 19 CFR 353.51(c) we calculated COP for NTN and NSK as the sum of reported materials, labor, factory overhead, and general expenses, and compared COP to home market prices, net of price adjustments and discounts.

In accordance with section 773(b) of the Tariff Act, in determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made in substantial quantities over an extended period of time, and whether such sales were made at prices which permit recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with our normal practice, for each model for which less than 10 percent, by quantity, of the home market sales during the POR were

made at prices below the COP, we included all sales of the model in the computation of FMV. For each model for which 10 percent or more, but less than 90 percent, of the home market sales during the POR were priced below the merchandise's COP, we excluded form the calculation of FMV those home market sales which were priced below the merchandise's COP, provided that these below-cost sales were made over an extended period of time. For each model for which 90 percent or more of the home market sales during the POR were priced below the COP and were made over an extended period of time, we disregarded all sales of that model in our calculation and, in accordance with section 776(b) of the Tariff Act, we used the constructed value (CV) of those models, as described below. See, for example, Mechanical Transfer Presses from Japan, Final Results of Antidumping Duty Administrative Review, 59 FR 9958 (March 2, 1994).

In accordance with section 773(b)(1) of the Tariff Act, to determine whether sales below cost had been made over an extended period of time, we compared the number of months in which sales below cost occurred for a particular model to the number of months in which that model was sold. If the model was sold in fewer than three months, we did not disregard below-cost sales unless there were below-cost sales of that model in each month sold. If a model was sold in three or more months, we did not disregard below-cost sales unless there were sales below cost in at least three of the months in which the model was sold. We used CV as the basis for FMV when an insufficient number of home market sales were made at prices above COP. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews, 58 FR 64720, 64729 (December 8, 1993).

In the case of NTN and NSK, we compared each firm's individual home market prices with annual COPs. We tested each firm's home market prices on a model-specific basis and found, for each firm, (1) Models where more than 90 percent of the home market sales were made at below-COP prices and were made over an extended period of time, (2) other models where between 10 and 90 percent of home market sales were made at below-COP prices and over an extended period of time, and (3) yet other models where less than 10 percent of home market sales were made at below-COP prices. See Polyethylene Terephthalate Film, Sheet, and Strip from Korea, 56 FR 16306 (April 22, 1991).

Because NTN and NSK provided no indication that their below-cost sales of models within the ''greater than 90 percent'' and the ''between 10 and 90 percent'' categories were at prices that would permit recovery of all costs within a reasonable period of time and in the normal course of trade, we disregarded those sales of models within the ''10 to 90 percent'' category which were made below cost over an extended period of time. In addition, as a result of our COP test for home market sales of models within the ''greater than 90 percent'' category, we based FMV on CV for all U.S. sales for which there were insufficient sales of the comparison home market model at or above COP. Finally, where we found, for certain of NTN's and NSK's models, home market sales for which less than 10 percent were made at below-COP prices, we used all home market sales of these models in our comparisons.

We used CV as FMV for those U.S. sales for which there were insufficient sales of the comparison home market model at or above COP, and for those U.S. sales for which there was no sale of such or similar merchandise in the home market. We calculated CV in accordance with section 773(e) of the Tariff Act. We included the cost of materials, labor, and factory overhead in our calculations. Where the actual selling, general, and administrative expense (SG&A) were less than the statutory minimum of 10 percent of the cost of manufacture (COM), we calculated SG&A as 10 percent of the COM. Where the actual profits were less than the statutory minimum of 8 percent of the COM plus SG&A, we calculated profit as 8 percent of the sum of COM plus SG&A. Based on our verification of NSK's cost response, we adjusted NSK's reported COP and CV to reflect the actual COP of related-party inputs.

In accordance with section 773 of the Tariff Act, for those U.S. models for which we were able to find a home market such or similar match that had sufficient above-cost sales, we calculated FMV based on the packed, F.O.B., ex-factory, or delivered prices to related purchasers (where an arm's-length relationship was demonstrated) and unrelated purchasers in the home market. We made adjustments, where applicable, for post-sale inland freight, and for home market direct expenses such as credit, commissions, and warranties. We also made adjustments for discounts, rebates and differences in physical characteristics. In addition, for comparison to ESP sales, we adjusted FMV for indirect selling expenses (which include advertising, inventory carrying costs, pre-sale inland freight, and other selling expenses) in the home market, limiting the home market indirect selling expense deductions by the amount of indirect selling expenses incurred in the United States. In situations where a U.S. sale with no commission was compared to a home market sale with a commission, the Department limited the deduction from FMV for home market indirect selling expenses by the amount of U.S. indirect selling expenses less the home market commission amount, rather than the entire amount of U.S. indirect expenses. In cases where a commission was granted on the U.S. sale only, we increased the amount classified as U.S. indirect selling expenses by the amount of the U.S. commission for comparison to home market indirect selling expenses. The deduction from FMV for home market indirect selling expenses was limited by the amount of the enhanced U.S. indirect selling expenses. We also adjusted FMV for the Japanese consumption tax in accordance with our decision in Silicomanganese, and, after decucting home market packing, we added to FMV packing expenses incurred in Japan for U.S. sales.

For comparison to purchase price sales, pursuant to section 773 of the Tariff Act, we added to FMV, where applicable, U.S. packing, credit, and direct advertising. We adjusted FMV for the Japanese consumption tax in accordance with our decision in Silicomanganese, and for comparison to both ESP and purchase price sales, NTN requested and received a level-of-trade adjustment to FMV based on certain home market indirect expenses.

Because MC Int'l did not sell TRBs in the home market during the review period, but rather only exported TRBs to the United States and other third-country markets, in accordance with section 773(a)(1) of the Tariff Act, we determined that, for MC Int'l, the home market was not viable. Therefore, pursuant to 19 CFR 353.48, for MC Int'l we based FMV on third-country sales.

In selecting the appropriate third-country market to use for comparison purposes, we first determined which third-country markets had adequate volumes of sales within the meaning of 19 CFR 353.49(b)(1). We determined that the volume of sales to a third-country market was adequate if the quantity of sales of such or similar merchandise equalled or exceeded five percent of the quantity of sales in the United States. We then selected the third-country market with the largest volume of sales, and with an

organization and development most like that of the United States, as the most appropriate market for comparison, in accordance with 19 CFR 353.49(b)(2) and 19 CFR 353.49(b)(3). Therefore, for MC Int'l's sales of TRBs to the first unrelated customer in the United States, we based FMV on MC Int'l's sales in Germany. In addition, we applied to MC Int'l's German sales the identical price stability test described above and because the annual weighted-average prices for TRBs sold by MC Int'l in Germany did not vary meaningfully from the monthly weighted-average prices of sales, and because there was no correlation between price and time, we considered the annual weighted-average German prices to be representative of the transactions under consideration. Therefore, we calculated a single FMV for each model sold by MC Int'l in Germany on an annual weighted-average basis.

No other adjustments were claimed or allowed.

Intent To Revoke

As a result of these preliminary results, we intend to revoke the A–588–054 finding with respect to Honda. Based on the fact that we found no margins for Honda's sales for the periods from January 1977 through July 1980, on September 1, 1981, we published in the **Federal Register** (46 FR 43864) our tentative determination to revoke the A–588–054 finding with respect to Honda. Based on the fact that Honda's margin was again zero (0.0) percent for the period from August 1, 1980 through September 1, 1981 (the ''gap period''), on May 14, 1984, we published in the **Federal Register** (49 FR 20356) our intent to revoke Honda from the finding. However, the 1980–81 preliminary results for Honda and the accompanying intent to revoke have no official standing. This is due to events surrounding the 1984 change in the law which required the Department to conduct administrative reviews upon request. On August 30, 1985, we sent letters to all interested TRB parties asking them to indicate the periods and companies for which the Department had not issued final results of review so that parties could request a review. Because we had not yet published a final results notice for Honda for the 1980–81 period, this period was included in our letters. In our August 13, 1985, **Federal Register** publication of our transition provisions concerning administrative reviews upon request, we explicitly stated that if preliminary results were completed, but a request for review was not received, we would not issue final results and the preliminary results would have no force or effect. (See Antidumping and Countervailing Duties; Administrative Reviews on Request; Transition Provisions, 50 FR 32557 (August 13, 1985).) Because we did not receive a request to review Honda for the 1980–81 period, we did not issue final results, we did not finalize Honda's revocation, and the May 14, 1984, preliminary results and intent to revoke have no official standing.

In November 1992, when we initiated these 1992–93 reviews, Honda requested final revocation from the A–588–054 finding. However, given the above-described events, we are unable to issue a final revocation at this time. Rather, we must return to the intent to revoke stage of the A–588–054 proceeding. While the intent to revoke notice normally covers the ''gap period,'' it has been the Department's policy in similar situations where revocation proceedings were begun, but never finalized and a significant backlog exists, to conduct an ''update'' review of the most recent one-year period, in lieu of the ''gap period'' (see Television Receivers, Monochrome and Color, from Japan; Final Results of Antidumping Administrative Reviews, 55 FR 35916 (September 4, 1990), and Roller Chain, Other Than Bicycle, from Japan; Final Results of Antidumping Administrative Review and Determination Not to Revoke in Part, 56 FR 50093 (October 3, 1991)). We have determined that this review constitutes such an update review.

We have reviewed and verified Honda for the 1992–93 period and have preliminarily found no margin for Honda for the period October 1, 1992 through September 30, 1993. Because Honda made no sales of merchandise covered by the A–588–054 finding at LTFV for at least three consecutive years (January 1977 through September 1981) and because there is no evidence on the record to indicate the likelihood of Honda's resumption of sales at LTFV in the future, we intend to revoke Honda from the A–588–054 finding in accordance with section 751(c) of the Tariff Act and 19 CFR 353.25. If Honda's margin does not change for our final results of this review, we will proceed with Honda's final revocation in our final results notice. As provided for in section 353.25(2)(iii) of the Department's regulations, Honda has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that TRBs and certain components thereof exported by Honda and thereafter imported into the United States are being sold at less than fair value. If this finding is revoked with respect to Honda, the revocation will apply to entries of TRBs and certain components thereof subject to the A–588–054 case exported by Honda, entered or withdrawn from warehouse, for consumption on or after September 1, 1981, the date of the original tentative revocation, and for which liquidation remains suspended.

On May 14, 1984, the Department also published in the **Federal Register** (49 FR 20356) the tentative determination to revoke the A–588–054 finding with respect to Fuji, Kawasaki, Yamaha, and Suzuki. Pursuant to 19 CFR 353.25(a), revocation of a finding or order is discretionary on the part of the Secretary. Because, for these preliminary results, we have determined margins for each of these firms for the A–588–054 review (whether calculated or the result of BIA), we have determined that they do not meet the requirement in 19 CFR 353.25(a)(ii) that they are unlikely to sell merchandise in the future at less than FMV. Therefore, we will not consider further revocation proceedings for any of these firms at this time.

Preliminary Results of Review

As a result of our comparison of USP to FMV we preliminarily determine that the following margins exist for the period October 1, 1992 through September 30, 1993:

For the A–588–054 Review

Manufacturer/ Reseller/ Exporter	Margin (%)
Nachi-Fujikoshi Corp.	[1] 18.07
NSK Ltd.	11.67
Fuji	1.81
Honda	0
Kawasaki	11.67
Yamaha	47.63
MC Int'l	0.45
Maekawa	[1] 0
Toyosha	47.63
Nigata	47.63
Suzuki	47.63

[1] No shipments or sales subject to this review. Rate is from the last relevant segment of the proceeding in which the firm had shipments/sales.

For the A–588–604 Review

Manufacturer/ Reseller/ Exporter	Margin (%)
NTN	14.06
Nachi-Fujikoshi Corp.	40.37
NSK Ltd.	10.39
Fuji	([2])
Honda	([2])
Kawasaki	36.52

Manufacturer/ Reseller/ Exporter	Margin (%)
Yamaha	40.37
MC Int'l	(2)
Maekawa	(2)
Toyosha	40.37
Nigata	40.37
Suzuki	40.37
Daido	(2)
Ichiyanagi Tekko	40.37
Nittetsu Bolten	40.37
Sumikin Seiatsu	40.37

[2] No shipments or sales subject to this review. The firm has no rate from any segment of this proceeding.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of these administrative reviews including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between the USP and FMV may vary from the percentages stated above.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided for by section 751(a)(1) of the Tariff Act. A cash deposit of estimated antidumping duties shall be required on shipments of TRBs from Japan as follows:

(1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews;

(2) For previously reviewed or investigated companies not listed above,the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 case will be 18.07 percent and 36.52 percent for the A–588–604 case (see Preliminary Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings Four Inches or Less in Outside Diameter, and Components Thereof, From Japan, 58 FR 51,058, 51,061 (September 30, 1993)).

All U.S. sales by each respondent will be subject to one deposit rate according to the proceeding.

The cash deposit rate has been determined on the basis of the selling price to the first unrelated customer in the United States. For appraisement purposes, where information is available, the Department will use the entered value of the merchandise to determine the appraisement rate.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–11160 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–DS–M

[A–301–602]

Certain Fresh Cut Flowers From Colombia; Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order

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

ACTION: Notice of initiation of administrative review and request for revocation in part of the antidumping duty order.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. Requests for revocation from the antidumping order were also received from specific exporters/growers. In accordance with the Department's regulations, we are initiating this administrative review for the period March 1, 1994 through February 28, 1995, for those named exporters/growers for whom a request for review was received. The Department is also identifying those exporters/growers which have requested revocation from the antidumping duty order.

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Ross, Thomas Schauer, or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 353.22 (a)(1), (a)(2), and (a)(3) (1994), for an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The Department has also received requests for revocation from the exporters/growers noted.

Initiation of Review

In accordance with 19 CFR 353.22(c)(1), we are initiating an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. We intend to issue the final results of this review no later than March 31, 1996.

We received requests for review of the following specifically named exporters/growers:

Agricola Acevedo
Agricola Arenales Ltda.
Agricola Circasia
Agricola el Cactus S.A.
Agricola la Corsaria Ltda.
Agricola la Montana
Agricola Las Cuadras
Agrodex Group
Agroindustria del Rio Frio Ltda.
Agroindustrial Don Eusebio
Agromonte
Agropecuria Cuernavaca Ltda.
Andes Group
  Cultivos Buenavista Ltda.
  Flores de los Andes Ltda.
  Flores Horizonte Ltda.
  Inversiones Penas Blancas Ltda.
Astro Flowers

Benilda Group
  Agricola Benilda
  Agricola La Celestina
  Agricola La Maria
Caicedo Group
  Andalucia
  Aranjuez S.A.
  Exportaciones Bochica S.A.
  Floral Ltda.
  Flores del Cauca S.A.
Cantarrana Group
  Agricola los Venados
  Cantarrana Ltda.
  Deer Field Flowers
Claveles Colombianos Group
  Claveles Colombianos Ltda.
  Fantasia Flowers Ltda.
  Splendid Flowers Ltda.
  Sun Flowers Ltda.
Claveles de los Alpes Ltda.
Colibri Flowers
Cultiflores
Cultivos Miramonte
Cultivos Tahami Ltda.
Daflor
Envy Farms Group
  Envy Farms Ltda.
  Flores Marandua Ltda.
Falcon Farms de Colombia S.A.
  (formerly Flores de Cajibio Ltda.)
Floraterra Group
  Flores San Mateo S.A.
  Siete Flores S.A.
  Flores Casablanca S.A.
Floreales Group
  Floreales Ltda.
  Kimbaya
Flores Aurora
Flores Calima S.A.
Flores Canelon
Flores Colon
Flores de Aposentos
Flores de Bojaca
Flores de Colombia
Flores de la Sabana S.A.
Flores de la Vega Ltda. (Vegaflor)
Flores de la Vereda S.A. (Flover)
Flores del Hato
Flores del Rio Group
  Agricola Cardenal
  Flores del Rio
  Indigo S.A.
Flores del Salitre Ltda.
Flores de Oriente
Flores de Serrezuela
Flores de Suba Ltda.
Flores el Cipres
Flores el Lobo
Flores el Molino S.A.
Flores el Tandil
Flores el Zorro
Flores Jayvana
Flores Juanambu
Flores la Fragrancia
Flores la Mana
Flores la Union
Flores la Valvanera Ltda.
Flores Marvilla (of the Flores Tiba Group)
Flores Mocari S.A.
Flores Monserrate Ltda.
Flores Sagaro
Flores San Juan
Flores Silvestres
Flores Tomine
Flores Tropicales Group
  Flores Tropicales Ltda.
  Happy Candy
  Mercedes Ltda.
  Rosas Colombianas Ltda.
Florex Group
  Agricola Guacari
  Flores Altamira
  Flores de Exportacion
  Santa Helena S.A.
Floricola la Gaitana S.A.
Funza Group
  Flores Alborada
  Flores de Funza
  Flores del Bosque
Guacatay Group
  Agricola Guacatay
  Jardines Bacata
  Agricola Cunday
Hosa Ltda.
Industrial Agricola
Ingro Ltda.
Inverpalmas
Inversiones Morrosquillo
Inversiones Supala S.A.
Jardines de Chia Ltda.
Jardines Fredonia
Las Amalias/Pompones
Manjui Ltda.
Maxima Farms Group
  Agricola Los Arboles
  Polo Flowers
  Rainbow Flowers
M.G. Consultores Ltda.
Monteverde Ltda.
Natuflora
Papagayo Group
  Inversiones Calypso S.A.
  Agricola Papagayo
Queens Flowers de Colombia
  Rosas Sabanilla Group
  Agricola la Capilla
  Flores la Colmena
  Inversiones la Serena
  Rosas Sabanilla
San Martin Bloque B Ltda.
Santa Helena S.A.
Santana Flowers Group
  Santana Flowers Ltda.
  Hacienda Curubital Ltda.
  Inversiones Istra Ltda.
Santa Rosa Group
  Agropecuaria Sierra Loma
  Flores Santa Rosa
  Floricola la Ramada
Senda Brava Ltda.
Soagro Group
  Agricola el Mortino
  Flores Aguaclara Ltda.
  Flores del Monte Ltda.
  Flores la Estancia
  Jaramillo y Daza
Tecnica Agricola Ganadera (TAG)
Tinzuque Group
  Tinzuque Ltda.
  Catu S.A.
Toto Flowers
Tuchany Group
  Flores Munya
  Flores Sibate
  Flores Tikiya
  Tuchany S.A.
Uniflor Ltda.
Velez De Monchaux e Hijos y Cia
Victoria Flowers
Vuelven Ltda.

We have received requests for revocation from the antidumping duty order for the following exporters/growers:

Agricola Circasia
Agrodex Group
Cultivos Miramonte
Flores Aurora
Flores de Serrezuela
Flores el Zorro
Flores Mocari
Funza Group
  Flores Funza
  Flores del Bosque
  Flores Alborada
Hosa Ltda.
Inverpalmas
Maxima Farms Group
  Agricola Los Arboles
  Polo Flowers
  Rainbow Flowers
Santana Flowers Group
  Santana Flowers, Ltda.
  Hacienda Curubital Ltda.
  Inversiones Istra Ltda.
Tinzuque Group
  Tinzuque Ltda.
  Catu S.A.
Uniflor

Interested parties must submit applications for administrative protective orders in accordance with 19 CFR 353.34(b) of the Department's regulations.

This initiation and notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended, 19 U.S.C. 1675(a) and 19 CFR 353.22(c).

Dated: April 28, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–11159 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 950317076–5076–01]

RIN 0693–ZA05

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Institute of Standards and Technology invites proposals from qualified organizations for funding projects to conduct the planning and coordination of manufacturing extension efforts at the state and local level under the Manufacturing Extension Partnership (MEP). These projects correspond to the State Technology Extension Program (STEP) component of MEP.

Program Planning project proposals can be submitted by all states or not-for-profit organizations designated by the state as responsible for manufacturing extension programs. States which have not received a planning award within the past two years from the National Institute of Standards and Technology under the State Technology Extension Program of the Manufacturing Extension Partnership are eligible. States that have received previous planning grants more than two years ago remain eligible for additional Program Planning projects. State which are performing planning on a regional basis within the state and which have recently received a regional planning award may apply for additional awards for planning in other regions. For further information, see Eligibility Criteria section.

DATES: Proposals from qualified organizations will be accepted from May 5, 1995, with a total of $3,000,000 of funding available.

ADDRESSES: Applicants should submit proposals to the Manufacturing Extension Partnership, Bldg. 301, Room C121, National Institute of Standards and Technology, Gaithersburg, MD 20899–0001.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact the Manufacturing Extension Partnership at (301) 975–5020, or at: Manufacturing Extension Partnership, Bldg. 301, Room C121, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–0001.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance

The catalog number for the award of State Technology Extension Program funds in the Catalog of Federal Domestic Assistance is 11.613.

Background

In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. § 272 (b)(1) and (c)(7) and § 278l), as amended, NIST will provide assistance to help states develop manufacturing assistance programs aimed at small- and medium-sized manufacturers and help bring those state programs to a level of performance where they can provide the full range of manufacturing extension services required by their manufacturers.

Under the NIST Manufacturing Extension Partnership (MEP), a cooperative effort to link and strengthen the nation's manufacturing extension programs and activities, NIST will make merit-based awards to states to help improve their planning, coordination, and implementation of their technology extension activities.

Funding Availability

Approximately $3,000,000 will be available to support cooperative agreements under this program. This is sufficient to fund all states which have not received a STEP planning award within the past two years. Proposals must request less than $100,000 in Federal funds.

Invitation for Proposals

Proposals will be accepted from qualified organizations from May 5, 1995, with a total of $3,000,000 of funding available.

Award Period

The cooperative agreements entered into under this program will have a performance period of one year. If an application is selected for funding, NIST has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of NIST.

Cost Share Requirements

A cost sharing contribution from each applicant is required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share must be less than $100,000. The applicant's share of the budget may include cash contributions from state, county, industrial or other non-federal sources and in-kind contributions which are directly related to the task to be accomplished.

Proposal Content

The proposal must, at a minimum, include the following:

A. An executive summary of the proposed project, consistent with the Evaluation Criteria stated in this notice.

B. A description of the proposed project, sufficient to permit evaluation of the proposal, in accordance with the proposal Evaluation Criteria stated in this notice.

C. A budget for the proposed project which identifies all sources of funds, and details expenses.

D. A description of the qualifications of key personnel who will be assigned to work on the proposed project.

E. A statement of work that discusses the specific tasks to be carried out, including a schedule of measurable events and milestones.

F. A letter from the Governor's office (not considered part of the page count) indicating that the applicant is the lead organization for conducting the proposed activities and acknowledging that there is only one proposal from that proposed activities and acknowledging that there is only one proposal from that state or region for Program Planning.

G. A Standard Form 424, 424–A, and 424–B (Rev 4–92) prescribed by OMB circular A–102, and Form CD–511, Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying. The 424 series of forms and form CD–511 will not be considered part of the page count of the proposal.

Proposal Format

The proposal must not exceed 20 typewritten pages in length. The proposal must contain both technical and cost information. The proposal page count shall include every page, including pages that contain words, table of contents, executive summary, management information and qualifications, resumes, figures, tables, and pictures. All proposals shall be printed such that pages are single-sided, with no more than fifty-five (55) lines per page. Use 21.6×27.9 cm (8½″×11″) paper or A4 metric paper. Use an easy-to-read font of not more than about 5 characters per cm (fixed pitch font of 12 or fewer characters per inch or proportional font of point size 10 or larger). Smaller type may be used in figures and tables, but must be clearly legible. Margins on all sides (top, bottom, left and right) must be at least 2.5 cm. (1″). The applicant may submit a separately bound document of appendices, containing letters of support for the proposal. The proposal should be self-contained and not rely on the appendices for meeting criteria. Excess pages in the proposal will not be considered in the evaluation. Applicants must submit one signed original plus six copies of the proposal.

Program Planning Projects

a. Project Objective

The purpose of Program Planning projects will be to create plans for state-

wide, coordinated, manufacturing extension programs in order to enhance the competitiveness of small- and medium-sized manufacturers by increasing their rate of adoption of improved technologies and techniques. These projects will plan for the development and coordination of existing and/or newly formed services, such as state industrial assistance programs; university-based industrial assistance programs; and business systems assistance programs, into a unified state-wide program. Plans will include methods for providing access to a wide range of technical services and access to related services for small- and medium-sized manufacturers in the state or region.

Applicants may conduct planning activities on an intrastate regional basis when regions are defined by the state. Regions should be clearly defined by the proposing organizations and it must be clear why the program is regionally oriented, versus state-wide.

Applicants may include small pilot testing activities as part of their planning process. If pilot testing of the proposed extension plan is included in the project, it should include methods of evaluating the pilot test's success in implementing the proposed extension plan. Any pilot activity must be consistent with the program plan developed for the state.

b. Program Planning Projects Evaluation Criteria

Proposals will be evaluated and rated on the basis of the following criteria by an impartial review panel. Each proposal should address all five evaluation criteria. Evaluation criteria are individually weighted. Selection will be based upon the total evaluation score of eligible proposals.

1. *Market Research and Assessment (20 points):* Potential applicants should specify a methodology for defining the demographics of the smaller manufacturers in the region (the customers for the extension system) and their technical assistance-related needs. Factors that will be considered include:

(a) Methodology for defining the size and demographic characteristics of the customer base to be served by the extension system.

(b) Methodology for determining the customer base's technical assistance needs.

(c) Methodology to ensure that the plan is appropriate for addressing identified industry needs.

2. *Resource Identification and Assessment (20 points):* Applicants should describe the methodology for collecting information about the number, size, technical sophistication, type, and relevance of existing industrial assistance activities that will be part of the coordination effort. Factors that will be considered include:

(a) Methodology for identifying relevant assistance programs and other sources of expertise outside applicant's organization.

(b) Methodology for assessing relevance and effectiveness of resources in addressing identifying industry needs.

3. *Coordination with Existing Resources (20 points):* Applicants should set forth a plan for interacting or coordinating with appropriate existing and/or newly-formed state and local industrial assistance services, potential industry partners, and appropriate federal services, to develop a coordinated state-wide delivery system. Factors that will be considered include:

(a) Methodology and adequacy of plans for forming effective linkages and partnerships necessary to plan for and provide a coordinated range of services to meet the needs of the customer base.

(b) Safeguards to ensure that planned activity does not duplicate existing services or resources.

4. *Management (25 points):* Applicants should specify plans for proper organization, staffing, and management of the planning process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct a state-wide (or regional) planning process.

(b) Qualifications and demonstrated leadership of the project manager and any project team to conduct a state-wide (or regional) planning process.

(c) Appropriateness of the organizational approach for carrying out the planning activity.

(d) Evidence of significant involvement and support by the state.

(e) Degree of leadership and control of the planning process by representatives from the private sector and especially smaller manufacturers.

5. *Financial Plan (15 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the plan to implement the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Cost effectiveness of the budget.

(b) The strength of commitment of the proposer's cost share, and the percentage of cost share that is cash. Cash cost share is considered to demonstrate a stronger commitment than in-kind.

(c) Effectiveness of management plans for control of budget.

(d) The portion of cost sharing that is in-kind must be appropriate and directly related to performing the tasks described in the statement of work.

c. Eligibility Criteria

- Eligible applicants for these projects are state governments or non-profit organizations.
- All states or regions which have *not* received a planning award within the past two years from the National Institute of Standards and Technology under the State Technology Extension Program of the Manufacturing Extension Partnership are eligible.
- States that have received previous planning grants more than two years ago remain eligible for additional Program Planning projects.
- States which are performing planning on a regional basis within the state and which have recently received a regional planning award may apply for additional awards for planning in other regions.
- Applicants will be able to propose conducting the planning activities themselves or arranging for some or all of the planning activities to be carried out by a second party.
- One proposal for Program Planning will be accepted per state or region within a state.

d. Required Letters

A letter will be required from the Governor of the proposing state indicating that the eligible applicant is the lead organization in that state or region for the proposed Program Planning activities, and acknowledging that there is only one proposal from that state or region for a Program Planning project. Where more than one such otherwise qualified Program Planning proposal per state is submitted, all such proposals from that state may be disqualified.

e. Cost Share Requirements

A cost sharing contribution from each applicant is required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share must be less than $100,000. The applicant's share of the budget may include cash contributions from state, county, industrial or other non-federal sources and in-kind contributions which are directly related to the task to be accomplished.

Proposal Selection Process

Proposal evaluation and selection process will be performed from the date

of publication of this document until further notice and will consist of three principal phases: proposal qualification, proposal review and award determination.

a. Proposal Qualification

All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this notice. Proposals which satisfy these requirements will be designated as qualified proposals. Non-qualified proposals will be returned to the proposer and may be resubmitted after addressing the omissions.

b. Proposal Review

NIST will appoint an evaluation panel, composed of at least three (3) reviewers, to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. After scoring, the panel will determine which proposals will be accepted and recommended for funding. For those proposals not recommended for funding at this stage, a NIST staff person not involved in the review of the proposal will contact the proposer and provide comments and feedback based upon the evaluation panel review. Proposals may then be modified and resubmitted for review.

c. Award Determination

The Director of NIST, or a designee, shall make final determination of whether an award should be made to the proposing organization based on the review of the panel's recommendations.

Additional Requirements

(a) Federal policies and procedures. Recipients and sub-recipients are subject to all Federal laws and Federal and NIST policies, regulations, and procedures applicable to Federal financial assistance awards.

(b) Indirect Costs. The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

(c) Pre-award activities. If applicants incure any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any written or verbal assurance that may have been received, there is no obligation on the part of NIST to cover pre-award costs.

(d) Delinquent federal debts. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to NIST are made.

(e) Past Performance. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(f) Name check review. All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(g) Primary applicant certification. All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' and the following explanations are hereby provided.

(1) *Non procurement debarment and suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, ''Non procurement Debarment and Suspension'' and the related section of the certification form prescribed above applies;

(2) *Drug-free workplace.* Recipients (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Supart F, ''Government-wide Requirements for Drug-Free Workplace (Grants)'' and related section of the certification form prescribed above applies;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, ''Disclosure of Lobbying Activities,'' as required under 15 CFR Part 28, Appendix B.

(h) Lower tier certifications. Recipients shall require applicants/bidders for subgrants, contacts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to NIST. SF–LLL submitted by any tier recipient or subrecipient should be submitted to NIST in accordance with the instructions contained in the award document.

(i) False statements. A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(j) American-made equipment and products. Applicants are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with the funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Section 607 (a) and (b).

(k) Intergovernmental review. Applicants under this program are subject to the requirements of Executive Order 12372, ''Intergovernmental Review of Federal Programs'' to the extent permitted by law.

(l) Classification. This notice relating to public property, loans, grants, benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purpose of the Regulatory Flexibility Act (5 U.S.C. 603 and 604). The program is not a major Federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control

Number 0693–0010, 0348–0043, and 0348–0044).

It has been determined that this rule is not significant for purposes of EO 12866.

Program Execution

(a) Cooperative Agreement. The formal agreement between NIST and the applicant will be in the form of a Cooperative Agreement.

(b) Project Work Plan. All recipients of awards are required to submit a Work Plan within thirty (30) days of the project start date. The work plan is a more detailed statement of work based on project objectives and activities the recipient will undertake to achieve the objectives and incorporates recommendations provided by the evaluation panel and the NIST Program Officer. The Work Plan must be reviewed and approved by NIST and will be incorporated into the cooperative agreement by amendment. Work Plan guidelines will be distributed to award recipients.

(c) Project Reporting. Quarterly reports will be submitted to the NIST Program Manager no later than thirty (30) days after the end of each quarter of the award year. The information provided is used to characterize the projects, develop detailed case studies, and evaluate individual examples of outcomes. Quarterly reporting instructions will be distributed to award recipients.

(d) Program Plan. A Program Plan will be submitted to the NIST Program Manager no later than thirty (30) days after the end of the award period. The Program Plan will discuss how the state will work with industry to develop a program that coordinates and supplements state resources for industrial modernization. The Plan must, at a minimum: characterize the industry in the state and survey their needs; identify and assess the relevance and sophistication of existing modernization resources; and develop a plan for a state-wide industrial modernization infrastructure that coordinates and complements existing relevant services and eliminates duplication. Program plans must be driven by industry needs. Program Plan guidelines will be distributed to award recipients.

Dated: May 1, 1995.

Samuel Kramer,

Associate Director.

[FR Doc. 95–11123 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–13–M

International Trade Administration

[A–570–834]

Notice of Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters From the People's Republic of China

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

EFFECTIVE DATE: May 5, 1995.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Todd Hansen, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0167 or (202) 482–1276, respectively.

Final Determination

We determine that disposable pocket lighters from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 735 of the Tariff Act of 1930, as amended (''the Act''). The estimated margins are shown in the ''Continuation of Suspension of Liquidation'' section of this notice. The U.S. Department of Commerce (''the Department'') also determines that critical circumstances exist for all exporters except Gao Yao (HK) Hua Fa Industrial Company Ltd. (''Gao Yao''), Guangdong Light Industrial Products Import & Export Corporation (''GLIP'') and PolyCity Industrial Limited (''PolyCity'').

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute and to the Department's regulations are references to the provisions as they existed on December 31, 1994.

Case History

Since the preliminary determination on December 5, 1994, (*Notice of Preliminary Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China*, 59 FR 64191 (December 13, 1994)), the following events have occurred:

On December 23, 1994, we issued our preliminary determination of critical circumstances with respect to the subject merchandise (60 FR 436, January 4, 1995).

On December 9 and December 19, 1994, Cli-Claque Company Limited (''Cli-Claque''), China National Overseas Trading Corporation (''COTCO''), Gao Yao and GLIP, requested a postponement of the final determination, pursuant to 19 CFR 353.20. Accordingly, on January 20, 1995, the deadline for the final determination was extended to April 27, 1995 (60 FR 5899, January 31, 1995).

From February 28 through March 17, 1995, we verified the responses of the exporters and producers of disposable lighters.

Petitioner and respondents filed case briefs on April 6, 10, 11, and 12, and rebuttal briefs on April 13 and 14, 1995. A public hearing was held on April 17, 1995.

Scope of Investigation

The products covered by this investigation are disposable pocket lighters (''lighters''), whether or not refillable, whose fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75 degrees fahrenheit (24 degrees Celsius) exceeds a gauge pressure of 15 pounds per square inch. Non-refillable pocket lighters are imported under subheading 9613.10.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Refillable, disposable pocket lighters would be imported under subheading 9613.20.0000. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Certain windproof refillable lighters, as described in memoranda to Barbara R. Stafford, dated December 5, 1994, and April 25, 1995, are excluded from the scope of this investigation. Also, excluded from the scope of this investigation are electric lighters (as described in the April 25, 1995 memo) which use two AA batteries to heat a coil for purposes of igniting smoking materials, rather than using butane, isobutane, propane, or other liquefied hydrocarbon to fuel a flame for purposes of igniting smoking materials.

Period of Investigation

The period of investigation (''POI'') is December 1, 1993 through May 31, 1994.

Non-market Economy Status

The PRC has been treated as a non-market economy country (''NME'') in past antidumping investigations (see, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818 (November 15, 1994) (''*Saccharin*''). No information has been provided in this proceeding that would lead us to overturn our former determinations. Therefore, in accordance with section

771(18)(c) of the Act, we are continuing to treat the PRC as an NME for purposes of this investigation.

Separate Rates

All five of the responding companies in this investigation have requested separate antidumping duty rates. In cases involving NMEs, the Department's policy is to assign a separate rate only when an exporter can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

In this case, two of the five respondents, PolyCity and Cli-Claque, are Hong Kong companies that are involved in joint ventures in the PRC that manufacture disposable lighters. Since PolyCity and Cli-Claque are located outside the PRC, the PRC government does not have jurisdiction over them. Moreover, the PRC government does not have any ownership interest in these exporters and, therefore, it cannot exercise control through ownership of these companies. On this basis, we determine that there is no need to apply our separate rates analysis to these two companies and that PolyCity and Cli-Claque are entitled to individual rates.

In contrast to PolyCity and Cli-Claque, Gao Yao is a 50/50 joint venture between a Chinese company, owned ''by all the people,'' and a Hong Kong company. The joint venture owns both the production and export facilities used to manufacture and export the disposable lighters it sells to the United States. Given the direct PRC ownership in Gao Yao's export operations, we have determined that it is appropriate to apply our separate rates analysis to this company.

Of the remaining companies, COTCO and GLIP indicated that they were owned ''by all the people'' during the POI. As stated in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the PRC,* 59 FR 22585 (May 2, 1994) (''Silicon Carbide''), ''ownership of a company by all the people does not require the application of a single rate.'' Accordingly, COTCO and GLIP are eligible for consideration for a separate rate under our criteria.

Although GLIP was owned during the POI by ''all the people,'' after the POI it became a shareholding company whose shares are held by a variety of investors. GLIP received approval to become a shareholding company in March 1994, but issued shares after the POI. A portion of the company's shares representing the initial investment in the company are held in trust by the State Asset Management Bureau (''SAMB''). However, the record of the investigation indicates that the SAMB has entrusted voting rights of its shares to the management of the company. In past cases involving similar circumstances, we found that the granting of a separate rate to the responding exporters was not precluded. (See, *e.g., Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625 (November 8, 1994), and *Final Determination of Sales at Less than Fair Value: Certain Paper Clips from the People's Republic of China,* 59 FR 511680 (October 7, 1994).) As stated above, we have applied our separate rates analysis to GLIP.

To establish whether a firm is entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the PRC,* 56 FR 20588 (May 6, 1991) (''*Sparklers*'') and amplified in *Silicon Carbide.* Under the separate rates criteria, the Department assigns separate rates only where respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of de Jure [1] Control

The respondents submitted a number of documents to demonstrate absence of *de jure* control, including two PRC laws indicating that the responsibility for managing enterprises owned by ''all the people'' is with the enterprises themselves and not with the government. These are the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''1988 Law''); and the ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (''1992 Regulations''). Respondents' submission also included the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (''Export Provisions''). In April 1994, the State Council enacted the ''Emergent Notice of Changes in Issuing Authority for Export Licenses Regarding Public Quota Bidding for Certain Commodities'' (Quota Measures).

The 1988 Law and 1992 Regulations shifted control of companies owned ''by all the people'' from the government to the enterprises themselves. The 1988 Law provides that enterprises owned by ''all the people'' shall make their own management decisions, be responsible for their own profits and losses, choose their own suppliers and purchase their own goods and materials. The 1988 Law contains other provisions which indicate that enterprises have management independence from the government. The 1992 Regulations provide that these same enterprises can, for example, set their own prices (Article IX); make their own production decisions (Article XI); use their own retained foreign exchange (Article XII); allocate profits (Article II); sell their own products without government interference (Article X); make their own investment decisions (Article XIII); dispose of their own assets (Article XV); and hire and fire employees without government approval (Article XVII). The Export Provisions indicate those products that may be subject to direct government control. Lighters do not appear on the Export Provisions list nor on the Quota Measures list and are not, therefore, subject to export constraints.

Since GLIP was initially a company owned by ''all the people,'' the laws cited above establish that the government devolved control over such companies. The only additional law that is pertinent to the *de jure* analysis of GLIP as a share company is the *Company Law* (effective July 1, 1994). While GLIP indicated that it is now organized consistent with the *Company Law,* the law did not enter into force until two months after the POI. In any event, this law does not alter the government's *de jure* devolution of control that occurred when the company was owned ''by all the people.'' Therefore, we have determined that GLIP is not subject to *de jure* control.

Consistent with *Silicon Carbide,* we determine that the existence of these laws demonstrates that COTCO, GLIP, and Gao Yao are not subject to *de jure* central government control with respect to export sales and pricing decisions. However, there is some evidence that the provisions of the above-cited laws and regulations have not been implemented uniformly among different sectors and/or jurisdictions in the PRC (*see* ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service-China-93–133 (July 14, 1993)). Therefore, the Department has determined that a *de facto* analysis is critical to determine whether COTCO, Gao Yao and GLIP are

[1] Evidence supporting, though not requiring, a finding of *de jure* absence of central control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measure by the government decentralizing control of companies.

subject to governmental control over export sales and pricing decisions.

2. Absence of *de Facto* Control

The Department typically considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to the approval of, a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide*).

During the verification proceedings, Department officials viewed evidence in the form of sales documents, company correspondence, and bank statements, and confirmed through inquiries of company representatives and officials from the China Chamber of Commerce for Machinery and Electronic Products Import & Export (''CCCME''), that COTCO, GLIP, and Gao Yao:

- Maintain their own bank accounts, including foreign exchange accounts;
- Are not restricted in their access to their bank accounts;
- Make independent business decisions, based on market conditions;
- Set their own prices independently and that the prices are not subject to review by government authorities;
- Are not subject to foreign exchange targets set by either the central or provincial governments; and
- Have the ability to sell, transfer, or acquire assets.

Exporter-Specific Information

Gao Yao

- Is a Sino-Hong Kong 50–50 joint venture whose Chinese participant is a company owned by ''all the people'';
- Maintains a bank account in Hong Kong where all monies received from Gao Yao's foreign sales are deposited;
- Has management that is selected by the board of directors, without any governmental interference;
- Divides its profits evenly between the joint venture partners according to ownership participation; and
- Retains a general manager who is a Hong Kong resident.

GLIP

- Is owned by ''all the people'' during the POI, but became a shareholding company in July 1994;
- Has management that is selected by its board of directors;
- Selection and continued employment of management is not subject to government approval;
- May issue additional shares through the company's board of directors with the approval of shareholders; and
- Government contact was limited to the issuance of GLIP's shareholding license and a general notice pertaining to penalties for illegal exporting.

COTCO

- Is owned by ''all the people'';
- Has managers that are hired following public notices of vacancy, screening, and hiring negotiations; and
- Has management that is evaluated by the employees of the company. The selection and promotion of management are not subject to any governmental entity's review or approval.

Based on the record evidence as verified, we find that there is a *de facto* absence of governmental control of export functions of each of the three companies. Consequently, COTCO, Gao Yao and GLIP have been granted separate rates in our final determination.

Surrogate Country

Section 773(c)(4) of the Act requires that the Department value the NME producers' factors of production, to the extent possible, in one or more market economy countries that are (1) at a level of economic development comparable to that of the NME country, and (2) significant producers of comparable merchandise. The Department has determined that Indonesia is the most suitable surrogate for purposes of this investigation. Based on available statistical information, Indonesia is at a level of economic development comparable to that of the PRC, and is a significant producer of lighters (*see*, memorandum to the file from Todd Hansen, dated December 5, Surrogate Country Selection and memorandum from David Mueller to Susan Kuhbach, dated September 8, 1994, Lighters from the People's Republic of China and Surrogate Country Selection.)

Fair Value Comparisons

To determine whether sales of lighters from the PRC to the United States by respondents were made at less than fair value, we compared the United States price (''USP'') to the foreign market value (''FMV''), as specified in the ''United States Price'' and ''Foreign Market Value'' sections of this notice.

United States Price

For all respondents, we based USP on purchase price, in accordance with section 772(b) of the Act, because lighters were sold directly to unrelated parties in the United States prior to importation into the United States and because exporters sales price methodology was not otherwise indicated.

We calculated purchase price based on packed, FOB foreign port prices for unrelated purchasers in the United States and packed, CIF prices, where appropriate. We made deductions for discounts, foreign inland freight, containerization, loading, port handling expenses, ocean freight and marine insurance, as indicated. When these services were purchased from a market economy supplier and paid for in a market economy currency, we used the actual cost. Otherwise, these charges were valued in the surrogate country. In addition, we have relied upon a price quote provided by an unrelated Hong Kong company to value freight in those instances where Cli-Claque used a related trucking company for the delivery of finished lighters.

At the request of the Department, on March 22 and 23, 1995, PolyCity and Cli-Claque submitted revised U.S. sales and factors of production information to reflect minor changes due to errors noted at verification. In addition, PolyCity revised: the U.S. sales listing to include additional sales that had been inadvertently omitted (*see* Comment 8); foreign inland freight to include additional charges incurred at the border; marine insurance and foreign brokerage and handling to reflect costs incurred on a value basis rather than a per piece basis; and ocean freight to reflect additional charges on certain invoices and payment in Hong Kong dollars rather than U.S. dollars. Cli-Claque's submission included small number of additional sales which had been inadvertently omitted and revisions to foreign inland freight figures on deliveries of finished lighters and purchases of inputs. Pursuant to findings at verification, minor revisions were made to COTCO's sales price. For Gao Yao, we adjusted USP for port handling charges that had been paid in a market economy currency to a Hong Kong company.

Foreign Market Value

In accordance with section 773(c) of the Act, we calculated FMV based on factors of production reported by the factories in the PRC which produced the subject merchandise for the five responding exporters. The factors used

to produce lighters include materials, labor, and energy. To calculate FMV, the reported factor quantities were multiplied by the appropriate surrogate values from Indonesia for those inputs purchased domestically from PRC suppliers. Where inputs were imported from market economy countries and paid in a market economy currency, we used the actual costs incurred by the producers to value these factors (see, *e.g. Final Determination of Sales at Less Than Fair Value: Oscillating Ceiling Fans from the People's Republic of China,* 56 FR 55271, October 25, 1991). We adjusted these input prices to make them delivered prices. We then added amounts for overhead, general expenses and profit, the cost of containers and coverings, and other expenses incident to placing the merchandise in condition packed and ready for shipment to the United States.

In addition, we have made the following changes to our preliminary calculations:

- For PolyCity, we valued certain inputs purchased from market-economy sources with market-economy currency using invoices dated outside the POI. For inputs that were not purchased from market-economy sources with market-economy currency, we used surrogate values (*see* Comment 11).
- For Cli-Claque, we calculated foreign inland freight based on verified distances for packing materials and finished lighters. In addition, we have relied upon a price quote provided by an unrelated Hong Kong company to value freight in those instances where Cli-Claque used a related trucking company for the delivery of imported inputs. We have adjusted direct labor hours to reflect verified information. Finally, to value the packing trays which were made by a factory located in the PRC with imported inputs, we have used surrogate values.
- For GLIP, we adjusted labor hours, butane usage, electricity usage, certain lighter parts and packing materials to reflect verified information. Also, we adjusted the prices paid to market economy suppliers based on verified information.
- For Gao Yao, we used surrogate values for inputs that we verified were purchased from PRC suppliers, but had originally been reported as purchased from market economy suppliers. We adjusted waste and electricity figures to reflect verified information. In addition, certain consumption figures were changed from a per kilogram basis to a per-piece basis. Finally, the weights of certain lighter parts were changed due to findings at verification.
- For COTCO, we adjusted labor hours and consumption of certain raw materials to reflect verified information. We also adjusted the weights of certain lighter parts and packing materials based on verified information.

In determining the surrogate price to be used for valuing the remaining factors of production, we selected, when available, publicly available published information (''public information'') from Indonesia.

With the exception of butane, we used the Indonesian import prices taken from the *Indonesian Foreign Trade Statistical Bulletin—Imports,* December 1993 and April 1994 to value material inputs. Based on discussions with U.S. Customs officials (*see* Memorandum to the File from Todd Hansen, dated April 26, 1995, Appropriate HAS Numbers), we have changed certain surrogate values to more accurately reflect the cost of the input used.

For butane, the quantity imported into Indonesia was insignificant. Therefore, for those PRC producers that did not import butane from market economy sources, we relied on Indonesian export statistics, as reported in the *Indonesian Foreign Trade Statistical Bulletin—Exports,* December 1993 and April 1994.

We used Indonesian transportation rates taken from a September 18, 1991, U.S. State Department cable from the U.S. Embassy in Indonesia to value inland freight between the source of the factor and the disposable lighter factory.

To value electricity, we used the public information from the Electric Utilities Data Book for Asian and Pacific Region (January 1993) published by the Asian Development Bank. To value labor amounts, we have used figures for skilled and unskilled labor obtained from *Doing Business in Indonesia* (1991) and the International Labor Office's *1994 Special Supplement to the Bulletin of Labor Statistics.* We have determined that these figure more accurately represent hourly wage rates paid in Indonesia than the rate provided in the Department of Labor's ''Foreign Labor Trends,'' which was the rate used in the preliminary determination.

We adjusted the factor values, when necessary, to the POI using wholesale price indices (''WPIs'') published by the International Monetary Fund (''IMF'').

Because we were unable to locate appropriate information on factory overhead in Indonesia, we relied upon data published by the Reserve Bank of India pertaining to Manufacturing—metals, chemicals, and products thereof. Because this figure includes indirect expenses and water, we have not calculated separate costs for these inputs.

For general expense percentages, we also used the Reserve Bank of India data. For profit, we used the statutory minimum of eight percent of materials, labor, factory overhead, and general expenses. We could not obtain Indonesian values for either general expenses or profit. The Indian profit rate was less than the statutory minimum of eight percent.

We added packing based on Indonesian values obtained from the *Indonesian Foreign Trade Statistical Bulletin—Imports,* December 1993 and April 1994.

Best Information Available (BIA)

In this investigation, some PRC exporters failed to respond to our questionnaire. We have determined that those exporters should receive rates based on BIA. In addition, because we presume all exporters to be centrally controlled, absent verified information to the contrary, in accordance with section 776(c) of the Act, we have assigned a margin based on BIA to all exporters who have not demonstrated their independence from central control. This determination is consistent with our use of a BIA-based ''PRC-Wide'' rate in other recent investigations (see *e.g., Saccharin*).

In determining what to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns less adverse margins to those respondents that cooperated in an investigation and more adverse margins for those respondents that did not cooperate in an investigation. As outlined in the *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany; Final Results of Antidumping Administrative Review* (56 FR 31692, 31704–05, July 11, 1991), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, (b) the highest calculated rate of any respondent in the investigation, or (c) the margin from the preliminary determination for that firm.

We consider all PRC exporters that did not respond, or otherwise did not participate in the investigation, to be uncooperative and are assigning to them the highest margin based on information submitted in an amendment to the petition.

Critical Circumstances

In our notice of *Preliminary Determination of Critical*

Circumstances: Disposable Pocket Lighters from the People's Republic of China, 60 FR 436 (January 4, 1995), we found that critical circumstances exist with respect to imports of disposable lighters from COTCO and Cli-Claque.

Pursuant to section 733(e)(1) of the Act and 19 CFR 353.16, we based our determination for COTCO on a finding of (1) an imputed knowledge of dumping to the importers because the estimated dumping margins were in excess of 25 percent, and (2) massive imports of disposable lighters over a relatively short period, based on an analysis of respondent's shipment data. Because Cli-Claque did not submit shipment information for the preliminary critical circumstances determination, we determined, as best information available, that critical circumstances exist. Cli-Claque submitted the requested information on January 6, 1995. For non-respondent exporters, we determined that critical circumstances do exist.

Respondents' shipment information has now been verified. The Department affirms the analysis as explained in its preliminary finding with respect to PolyCity, Gao Yao, GLIP and COTCO. Accordingly, we determine that critical circumstances do not exist with respect to imports of disposable lighters from PolyCity, Gao Yao, and GLIP and do exist with respect to COTCO and all non-responding exporters. With respect to Cli-Claque, we also determine that critical circumstances do exist (*see* Comment 13).

Verification

As provided in section 776(b) of the Act, we verified the information submitted by respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, and original source documents provided by respondents. Our verification results are outlined in detail in the public version of the verification report, available in Room B–099 of the Main Commerce Building, 14th and Constitution, Washington DC 20230.

Interested Party Comments

General Issues

Comment 1: Separate Rates

Petitioner argues that an exporter should not receive a separate rate unless the producer supplying the exporter can demonstrate that it is also independent of central government control. The fact that an exporter is independent from central government control provides no guarantee that the producer or producers supplying it are also free of government control. Since respondents have not overcome the presumption that their Chinese disposable lighter producers are government controlled, and the exporters merely serve as middlemen for the sale of lighters to the U.S., the exporters should be assigned the ''PRC-Wide'' rate.

Petitioner questions whether the Department originally intended to apply the separate rates analysis only to exporters. Petitioner points to the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) (*Sparklers*), where the Department enumerated separate rates for ''producer/exporter'' combinations. However, in recent cases, such as *Final Determination of Sales at Less Than Fair Value: Coumarin from the People's Republic of China* (59 FR 66899, December 28, 1994) (*Coumarin*), the Department has indicated that it is intentionally restricting its analysis of freedom from government control solely to exporters. Petitioner argues that under this policy, the Department could find itself in the position of certifying that an exporter is independent and, therefore, can be assigned a separate rate, while the exporter is purchasing from a producer who would not be allowed a separate rate because of government control. Petitioner does not believe that this is what the Department intended when it enunciated its separate rates analysis in *Sparklers.* Petitioner also questions why the market oriented industry (''MOI'') test looks at the producer and not the exporter, while the separate rates test does the opposite.

Gao Yao, GLIP, and COTCO argue that the independence of their suppliers is not relevant to the Department's determination of whether Gao Yao, GLIP, and COTCO should receive separate rates. The Department has sought, received, and verified information concerning the independence of Chinese exporters. Gao Yao, GLIP, and COTCO argue that examining the suppliers is irrelevant and conflicts with well-established Department policy.

Both PolyCity and Cli-Claque argue that they are independent Hong Kong companies, and the Chinese government does not own and cannot control PolyCity's or Cli-Claque's activities. Therefore, they are entitled to separate rates.

DOC Position

The separate rates policy reflects the Department's concern that the Chinese government may interfere in the export activities of companies selling to the United States and manipulate these companies' export prices. Where an exporter is able to demonstrate that its export activities are not controlled by the government, then the Department will recognize that independence by awarding the exporter a separate rate (*see, e.g., Saccharin*).

Petitioner's argument that trading companies are merely middlemen suggests that the Chinese government manipulates the price of exports to the United States (1) by controlling the price between the factory and the trading company, or (2) by controlling the exporter's price to the United States through the producer. With respect to the first concern, the manufacturer's price to the exporter does not play any role in the Department's calculation. U.S. price is based on the exporter's (usually a trading company's) price to the United States and FMV is based on the producer's factors of production. Therefore, potential government control of prices between the producers and exporters is irrelevant. Moreover, where the producer is not the exporter, we have determined there is no evidence that the producer is involved in the export activities of the exporter.

Because the exporter/trading company sets the export price, it is appropriate to focus the separate rates analysis on the exporter. In contrast, the purpose of the MOI test is to determine whether foreign market value can be determined using prices or costs in the NME. Thus, the test focuses on government control of the domestic industry, rather than on export activities. Thus, petitioner's attempt to draw a parallel between a separate rates analysis and an MOI analysis is misplaced.

Comment 2: ''Tied'' Antidumping Duty Rates for Exporter/Supplier

Petitioner argues that where the Department issues a separate rate to an exporter, that rate should be applied to the producer/exporter combination that gave rise to the rate. Consequently, if the exporter later purchases from another producer, the ''PRC–Wide'' rate should apply. Such ''tied'' rates would prevent producers from channeling merchandise out of the PRC through the exporter with the lowest rate.

Petitioner agrees with the Department's decision to tie Gao Yao and its manufacturer when it assigned them a zero margin in the preliminary determination, making any other manufacturers shipping through Gao Yao subject to the ''PRC–Wide'' rate. However, petitioner contends that the Department has refused to recognize

that other exporters have been given a free hand to export disposable lighters from any producer in China to the United States at the rate applicable to that exporter. Consequently, producers will sell through exporters with low rates, thereby avoiding the higher rates found in this investigation, particularly the ''PRC–Wide'' rate. Because of the distinction made for zero margins, petitioner argues that it is more beneficial for an exporter to have a small positive margin than to have a zero margin, as an exporter with a small positive margin may export for any producer at that small margin. Therefore, petitioner requests that the Department issue antidumping duty rates for exporter/producer combinations.

Gao Yao, GLIP, and COTCO state that petitioner's conclusion regarding the channeling of all exports through the exporter with the lowest dumping margin is erroneous. In the past, trading companies which export to the United States have received individual rates irrespective of their suppliers. COTCO and GLIP state that it is appropriate for Gao Yao to receive a ''tied'' rate for merchandise sold and manufactured by Gao Yao, because Gao Yao is a manufacturer who exports, not a trading company. COTCO and GLIP state that, as trading companies, they should not receive a ''tied'' rate even if they receive a zero margin. Gao Yao, GLIP, and COTCO argue that even if a new factory made shipments of goods to the United States through an exporter with a lower dumping rate, the subsequent antidumping review would require a factors analysis of the supplying factory.

Cli-Claque maintains that it is an independent Hong Kong company that competes with all other lighter manufacturers. It has no incentive or desire to help its competitors ship to the United States. Moreover, if Cli-Claque shipped other companies' lighters to the United States, Cli-Claque would risk losing its low dumping margin in subsequent reviews.

DOC Position:

We have determined that the pairing of exporters and producers for calculating antidumping rates is inappropriate under the circumstances discussed above. Recent Department practice has been to assign rates only to exporters except in the case of producer/exporter combinations that have been found not to be dumping. (See *e.g., Pencils, Saccharin, Coumarin,* and *Final Antidumping Duty Determination: Certain Cased Pencils from the People's Republic of China,* 59 FR 55625, November 8, 1994, where the Department assigned a zero rate to a producer/exporter for purposes of exclusion from the order, but the remaining rates were assigned to exporters only.) Where a producer/exporter combination is found not to be dumping, it is appropriate to publish a rate that applies to that producer/exporter combination because they are excluded from the order and, therefore, future administrative reviews. However, all other exporters remain subject to the order and administrative reviews. Hence, contrary to petitioner's assertion, those exporters have no incentive to export the output of producers that might yield a high FMV unless they adjust their U.S. prices accordingly. If they fail to do so, an administrative review would result in an assessment of additional duties, with interest, and a higher cash deposit rate for future entries.

Comment 3: Overhead and Energy

COTCO, Gao Yao and GLIP argue that the cable from the U.S. Embassy in Jakarta, relied upon by the Department in its preliminary determination, does not state if indirect labor and electricity are included in overhead. Since this is unclear, COTCO, Gao Yao and GLIP argue that the Department should assume, as it has in past cases, that indirect labor and electricity are included in factory overhead. (*See Sebacic Acid from the People's Republic of China,* (59 FR 28053, 28060, May 31, 1994) and *Shop Towels of Cotton from the People's Republic of China* (56 FR 4040, 4042 , February 1, 1991).) COTCO, Gao Yao and GLIP also state that the activities of the indirect laborers are not directly related to production and would normally be included in overhead.

PolyCity states that the standard cost accounting treatment throughout the world for electricity and other utilities is to include these items in factory overhead. According to PolyCity, the Department double-counted these items when it separately included values for them in addition to calculating a factory overhead rate.

Petitioner acknowledges that the factory overhead rate in the U.S. Embassy cable does not make clear whether indirect labor is included. However, since COTCO, Gao Yao and GLIP argue that there is very little indirect labor involved in lighter production, petitioner states that there would be little, if any, double counting if indirect labor were valued separately.

DOC Position

For this final determination, we are using information from the *Reserve Bank of India Bulletin,* (''RBIB'') December 1993 to value factory overhead. We were unable to obtain an overhead rate for light manufacturing plants in Indonesia. Therefore, we turned to India, where a manufacturing overhead rate was available. We have determined that this overhead figure represents the best overhead figure for the industry in question because it is industry specific.

In determining what items should be valued separately from factory overhead, we examined the costs included in the particular overhead rate being used. Since the RBIB factory overhead rate does not include indirect labor and energy, we are assigning separate values for these items, notwithstanding respondents' arguments about standard cost accounting practices.

Comment 4: Date of Sale

Petitioner argues that the date of sale should be the date of Cli-Claque's and PolyCity's facsimile confirmation, not the date of invoice. Petitioner contends that Cli-Claque and PolyCity negotiate price, quantity, and estimated delivery date by phone and confirm these terms by facsimile. However, these companies reported the date of invoice as the date of sale. Because of a drastic increase in imports during June and the first half of July, petitioner is particularly concerned about any sales confirmed in the POI, but not invoiced in the POI.

PolyCity and Cli-Claque state that the Department chose the date of sale based on our normal methodology and that they correctly complied with its request.

DOC Position

At verification, we confirmed that the appropriate date of sale was the date PolyCity and Cli-Claque issued the invoice which accompanied the shipping documentation. We noted that changes in delivery terms and quantity did occur between the facsimile confirmation and the date of invoice. Although the verification report stated that the facsimile was a ''confirmation'' facsimile, that statement was not meant to imply that all the terms of sale were agreed upon and could not change. The facsimile, as verified, is merely an acknowledgement that a sales transactions will occur between the company and its customer.

Generally speaking, the Department will consider the date of sale to be the date on which all substantive terms of the sale are agreed upon by the parties. This normally includes the price and quantity. If the terms of sales agreement or contract permit the revision of prices up to the date of invoice, shipment, or

the purchase order, then it is the Department's practice to base the date of sale on the shipment date, invoice date, or the purchase order date, depending upon which date the revisions are made. Thus, we accept the date of sale as verified.

Comment 5: Non-market Economy Currency

PolyCity and petitioners have advanced arguments regarding the valuation of certain inputs purchased from market economy suppliers, that cannot be addressed in this notice because of their proprietary nature. These comments are addressed in a separate memorandum to the file.

Comment 6: Appropriate BIA Rate

Petitioner maintains that the Department should use the highest rate (*i.e.*, 346.55 percent) alleged in the petition as the ''PRC-Wide'' rate. Petitioner calculated the FMV used in this margin calculation based on a combination of Indian input values and its own costs. Petitioner states that because the Department believed that it relied too heavily on its own costs and that India may not be the most appropriate surrogate country, the Department requested that petitioner recalculate FMV based on the price of lighters exported from the Philippines. (The Philippines is a known producer of disposable lighters and, in prior cases, the Philippines had been determined to be at a level of economic development comparable to the PRC.) The estimated dumping margin using the Philippine export data is 197.85 percent. Petitioner argues that, although it submitted additional information requested by the Department (offered as an alternative set of documents to supplement the exhibits in the original petition), the margin calculated in the original petition has not been discredited.

DOC Position

We are continuing to use the rate based on Philippine export data. We believe this rate is appropriate because: (1) The original petition rate relies too heavily on petitioner's own costs; (2) we initiated the case on the basis of the Philippine export data; and (3) India is not a significant producer of lighters.

Company Specific Issues

PolyCity Industrial Limited

Comment 7: BIA

Petitioner argues that the Department should use BIA in determining the antidumping duty margin for PolyCity because, due to the numerous corrections submitted to the Department since the preliminary determination and the errors discovered at verification, the reliability of PolyCity's data is called into question. In particular, petitioner notes: (1) Every sale examined at verification required revision; (2) foreign inland freight, ocean freight, and marine insurance were misreported; (3) PolyCity used an unusual sales process; and (4) PolyCity's method of documenting input purchases lacked consistency. Petitioner contends that PolyCity had more than adequate time to correct these errors in the numerous submissions PolyCity filed between the preliminary determination and verification. Petitioner argues that these facts, along with the inaccuracies uncovered at verification, make PolyCity's data unreliable. Therefore, the Department should use uncooperative BIA in calculating PolyCity's margin.

If the Department does not use total uncooperative BIA, petitioner then argues that the Department should use partial BIA for these costs. Petitioner contends that since PolyCity failed to report certain additional charges for foreign inland freight, reported ocean freight in the wrong currency, and miscalculated marine insurance, using BIA values for these factors is appropriate.

PolyCity maintains that accepting petitioner's allegations would run counter to the Department's practice and regulations. PolyCity states that all of its submissions and corrections have been timely filed. The verification at PolyCity was routine, and the Department treated it routinely. The Department typically makes corrections and adjustments at verification. The corrections discovered at verification were merely errors, not hidden or misrepresented information. In addition, PolyCity maintains that it erred in favor of the petitioner, rounding numbers up on most observations. To use BIA in this situation would be a radical departure from the Department's rules and practice. Hence, the Department should use PolyCity's verified information.

DOC Position

We agree with respondent that the final determination should be based on PolyCity's verified data. The items described by petitioner are minor changes that were corrected for this final determination. Omissions from the response were inadvertent and corrected information was verified. We are satisfied that the record is now complete and accurate regarding this company's sales of subject merchandise during the POI.

Comment 8: New Sales

Petitioner states that the three new invoices discovered at verification should be included in the margin calculations and should be assigned the highest BIA rate. Since these sales were not reported in a timely manner, petitioner argues that the Department should assign a unit margin for each of these sales based on BIA. Due to the numerous errors found at verification, petitioner recommends using the uncooperative BIA rate. For one sale, which was added to PolyCity's sales listing after the preliminary determination, petitioner recommends using the cooperative BIA rate.

PolyCity states that three sales were inadvertently excluded from the sales listing but that they have now been included. Therefore, BIA for these sales is unwarranted. The one sale petitioner alleges was added to PolyCity's sales listing after the preliminary determination was, in fact, included in the first sales listing and every listing since. Therefore, it should not be treated differently than the other sales that have been reported.

DOC Position

We determine that the omissions described above were inadvertent and the corrected information was verified. The new sales represent a small percentage of total sales during the POI and, at verification, were not hidden or misrepresented. Further, we are satisfied that the record is now complete and accurate as to this company's sales during the POI of subject merchandise. Accordingly, the reported information, as corrected based on verification, is the appropriate basis for this LTFV determination for PolyCity.

Comment 9: Untimely Submissions

Petitioner argues that changes and additions to PolyCity's data which were submitted on February 21, 1995, should be rejected as untimely filed with the Department.

PolyCity states that this submission was timely filed in accordance to instructions given by Department officials. PolyCity argues, however, that petitioner's comment should not have been included in the brief filed on April 10, 1995, since only comments on verification reports were to be filed. Accordingly, PolyCity argues that this comment cannot be included in the record.

DOC Position

We agree with respondent, in part. Respondent's submissions were timely filed, in accordance with our instructions. However, we disagree with

respondent that petitioner's comments should have been rejected. Due to miscommunication between the Department and the parties in this case, parties were unclear where to report company-specific issues that were not verification issues. Therefore, we have determined that this argument was properly included in this brief and have allowed it to remain in the record of this investigation.

Comment 10: Use Actual Labor Rates

Respondent argues that the Department should use the actual wage rates paid by PolyCity to its Chinese workers. In the past, the Department has used actual costs for certain factors of production, if these costs represent accurate, market-based values. Since the workers of PolyCity freely negotiate their wages without interference from the central government (*e.g.* unemployed workers wait at the factory gate to interview for open positions,) respondent believes that there is no basis for the use of surrogate values.

If the Department rejects the use of PolyCity's wage rates, respondent asks that we use the average of the wages on the record for unskilled factory0 workers in Indonesia. The rate used by the Department in its preliminary determination based on locally engaged U.S. Embassy personnel in Indonesia is not a valid surrogate for the cost of unskilled factor labor in China.

DOC Position

As stated above, we have determined that the PRC is a non-market economy country for purposes of this determination. Moreover, there has been no claim and we have not found that available information would permit us to determine FMV under the market economy provisions of the antidumping duty law (*see* section 773(c)(1)(b) of the Act). Hence, we are basing FMV on the Chinese factors of production values in a surrogate country.

PolyCity points to *Lasko Metal Prods., Inc.* v. *United States* 810 F. Sup. 314 (CIT 1992) *aff'd* 43 F.3d 1442 (Fed. Cir. 1994) to support the proposition that the Department can use respondent's actual costs when those costs represent accurate market-economy values. However, *Lasko* addresses Department's practice of using respondent's actual costs in narrow circumstances—*i.e.*, where the input is purchased from a market economy country and paid for in a market economy currency. We do not use values within the non-market economy.

Moreover, in the one case cited by PolyCity (*Final Determination of Sales at Less Than Fair Value: Chrome Plated Lug Nuts From the People's Republic of China*, 56 FR 46153, 46154, September 10, 1991), the Department was investigating an MOI claim, not a claim that labor was market oriented. In addition, the Department did not find that wages in the PRC were market determined. To the contrary, we stated,'' * * * we have concluded that respondent has not overcome the presumption of state control with respect to labor and that the PRC wage rate should not be used for purposes of the factors of production analysis.''

Comment 11: Manufactured Parts vs. Purchased Parts

In cases where PolyCity both purchases a part and produces the same part from imported raw materials, it argues that the price it pays for the purchased part should not be used to value this input. Instead, the Department should construct a value using the factors needed to produce the part.

PolyCity contends that valuing the part using the price paid for the finished part would overstate the amount of labor and overhead allocated to PolyCity's other activities. This is because PolyCity's labor and overhead figures include labor and overhead to produce these parts, and the Department does not have the necessary information to back out these amounts. Alternatively, if the Department does not accept PolyCity's proposal to use solely a constructed value, then it should value the parts on a weight-average basis between the purchased and the manufactured parts.

DOC Position

We disagree with respondent that we should use the factors methodology for all of the parts consumed during the POI. Contrary to PolyCity's assertion, to use the factors methodology for all parts consumed during the POI would understate the labor and overhead because it would not include additional labor and overhead needed to produce those parts. Thus, we have only applied the factors methodology for inputs actually produced by PolyCity.

For the portion of the parts used which PolyCity purchases from market economy suppliers in a market economy currency, we valued the part using an invoice price outside the POI. While our first preference would be an invoice price during the POI, in this investigation we are accepting actual, pre-POI prices paid to a market economy producer in market economy currency because such prices, although outside the POI, are the best available information on the value of these inputs and are more accurate than surrogate values. In many instances, the Department uses surrogate values that are from pre-POI time periods and are generally further removed from the POI than the pre-POI market economy prices. Using pre-POI market economy prices that the producer actually paid is consistent with that practice.

Comment 12: Jakarta vs. Non-Jakarta Rates

PolyCity maintains that the Department should use a non-Jakarta wage rate in valuing labor. It states that wage rates in Jakarta are not an appropriate surrogate for wages in Chinese factories because Chinese lighter factories are located in small, provincial towns, not major cities like Jakarta. Moreover, PolyCity states that not one of the Indonesian lighter factories is located in Jakarta.

DOC Position

We disagree that we are required ''to customize'' factor values to reflect the conditions of certain PRC respondents. We have used ILO data pertaining to Indonesian wage rates to value the labor input for all PRC producers. This data reflects an Indonesian-wide average, not the wage rate in Jakarta.

Cli-Claque Company Limited

Comment 13: Electronic Lighters

Cli-Claque claims that its flat, refillable electronic lighter, referred to as a card lighter, is not disposable and should not be included within the scope of the investigation. In contrast to flint lighters, this Cli-Claque lighter uses a piezo electronic lighting mechanism. Further, because of its unique flat shape, the lighter must be produced from a more costly, higher grade of plastic.

With respect to channels of distribution, Cli-Claque sell these lighters at wholesale to tobacco and other companies for use as promotional items. Because these lighters are considerably more costly to produce, Cli-Claque states that it could not sell them at retail in competition with ordinary flint lighters.

Throughout the investigation, petitioner has maintained that the existence of an electric lighting mechanism alone should not be a determining factor in deciding whether a lighter is or is not disposable. Petitioner cites examples of disposable lighters that use the piezo electric ignition mechanism. Regarding ultimate use of the lighter, petitioner maintains that it is the same as the flint lighter—to light various tobacco products. Regarding channels of distribution, petitioner states that Cli-Claque's

lighters could compete at retail with flint lighters, if the manufacturer imprinted designer wraps or logos to entice customers to pay a somewhat higher price.

DOC Position

Although Cli-Claque's card lighters are not currently sold at retail but are sold at wholesale to tobacco and other companies as promotional items, these lighters are not the only type of lighters to be sold to companies as promotional items. The standard, disposable butane lighter is also sold to companies as a promotional item. Thus, the card lighters are not unique in their use as promotional items, because standard, disposable lighters clearly serve this purpose as well.

Also, the existence of a piezo electric ignition mechanism is not decisive. Several brands of disposable lighter employ the piezo mechanism rather than the more common flint ignition system. The fact that a lighter is refillable is also not controlling, as indicated in the scope of this investigation, which recognizes that a disposable lighter may be refillable or non-refillable.

Further, card lighters come in both refillable and non-refillable versions. The lighters are identical in every respect with the exception of the refill valve on the refillable lighter. Both lighters feature the more expensive plastic and the piezo electric lighting mechanism. The addition of a refill value to the card lighter is insufficient to warrant reclassifying it as a non-disposable lighter. Therefore, disposable lighters with refill valves clearly fall within the scope of the investigation.

Comment 14: Critical Circumstances

Cli-Claque argues that critical circumstances do not exist. Cli-Claque maintains that the increase in July 1994 is due to a shipment to a U.S. customer to meet the July 12, 1994 deadline. This deadline, established by the Consumer Products Safety Commission's (''CPSC''). The CPSC barred the import of disposable lighters that did not meet more stringent safety requirements after July 1994. Thus, Cli-Claque argues that this shipment did not result from the filing of the antidumping petition, but from U.S. regulatory requirements imposed by CPSC.

Cli-Claque argues that, with respect to the history of dumping, although the Council of European Communities found dumping of gas-fueled, non-refillable pocket flint lighters, the margin in the case of China was only 16.90 percent, well below the Department's 25 percent threshold. In addition, according to Cli-Claque, the European determination did not cover piezo-electric lighters, but only flint lighters. Since piezo-electric lighters represent a significant percentage of the lighters exported to the United States by Cli-Claque, the Department should not impute knowledge of dumping to Cli-Claque. Moreover, Cli-Claque maintains that the Department cannot impute knowledge of dumping to Cli-Claque's importers since the Department found a dumping margin of only 7.03 percent. The Department's practice has been to impute such knowledge only where it finds a preliminary margin equal to or greater than 25 percent.

Petitioner argues that although the European determination only covers flint lighters, the Department has preliminarily determined that electronic lighters are in the same class or kind of merchandise as flint lighters. In addition, petitioner argues that, as noted in the verification report, Cli-Claque used the date of sale, rather than the shipment date, for reporting monthly shipments. According to petitioner, this incorrect reporting understates the massiveness of imports by shifting shipments from the post-petition filing period to the pre-petition filing period. Finally, petitioner argues that although Cli-Claque claims that the increase in July 1994 was due to a shipment to a customer to meet the July 12, 1994 deadline established by the CPSC, the Department has repeatedly held that the statute and regulations make no mention of weighing other factors or examining alternative causes as to the reason for increased imports.

Petitioner also argues that the Department should continue to find that critical circumstances exist with respect to imports of lighters from Cli-Claque. Petitioner maintains that the first prong of the statutory requirement for critical circumstances, *i.e.*, knowledge of dumping, is fulfilled. Petitioner states that disposable lighters from the PRC have been found to be dumped in both the European Union and Argentina. In 1991, the European Commission (EC) imposed antidumping duties on gas-fueled, non-refillable pocket flint lighters originating in China. The fact that the margin on lighters from China was only 16.9 percent is irrelevant for this prong of the knowledge test. According to petitioner, the Department requires a 25 percent margin on imports only when the Department is imputing knowledge of dumping under the second alternative criteria for knowledge of dumping, not when the Department is inquiring whether there is a history of dumping in the United States or elsewhere under the first alternative criteria for knowledge of dumping.

DOC Position

We disagree with petitioner that a history of dumping exists with respect to disposable lighters. We do not require the scope of our proceeding to match exactly the scope of the foreign proceeding. Since the lighters examined by the EC are subject to this investigation, we find that there is a history of dumping with respect to the class or kind of merchandise as a whole and, by extension, with respect to Cli-Claque. We have established a history of dumping with respect to Cli-Claque and we agree with petitioner that in evaluating this criterion, the size of the margin found by the EC is irrelevant. Because there is a history of dumping, we are not required to consider whether the importer knew or should have known that the exporter was selling the subject merchandise at less than fair value.

We have also considered whether imports of the merchandise have been massive over a relatively short period of time in accordance with 19 CFR 353.16(f) and (g). Based on verified information on shipments by Cli-Claque, we find that imports have been massive over a relatively short period of time, even when taking into account the increase in volume in advance of the July 1994 deadline for importing non-childproof lighters. (For a more detailed analysis, see the proprietary Calculation Memorandum for this final determination.) Therefore, we find that critical circumstances exist with respect to imports on behalf of Cli-Claque because a history of dumping exists and because imports have been massive over a relatively short period of time.

Comment 15: Defective Lighters

Cli-Claque argues that there is no need to adjust total production figures to account for defective lighters, as petitioner maintains, since the production figures used in the factor of production calculations are already net of defective lighters sold to customers in the PRC which were later returned to Cli-Claque.

DOC Position

We agree with petitioners and have made an adjustment to the cost of manufacture to account for the defective lighters sold which were later returned to Cli-Claque.

Comment 16: Water and Diesel

Petitioner argues that the Department should not include water and diesel in overhead, but should calculate values

for these inputs separately, using surrogate values. Petitioner maintains that the diesel fuel used to power the generators is a direct factor of production in producing lighters, and not, as in some other cases, an incidental expense. As a direct factor of production, diesel fuel should be included as a separate factor of production and not included as a part of factory overhead.

Cli-Claque argues that water should be treated as an overhead item. With regard to diesel fuel, Cli-Claque has submitted the total kilowatt hours of electricity used because electricity is the direct input used in the production process. Cli-Claque asserts that if the Department were to also include diesel fuel used to produce electricity as a factor of production, it would be double-counting the cost of electricity.

DOC Position

We agree with respondents that water should be included in factory overhead and, therefore, should not be valued separately. Because it is normal practice to include such cost in factory overhead, and the RBIB data did not indicate to the contrary, we find it reasonable to presume that water is included in the overhead value we used (*See Saccharin*).

We also agree with Cli-Claque that, for those companies that generate electricity using diesel-powered generators, inclusion of diesel fuel and electricity as separate factors of production would result in double-counting. Since diesel fuel is the factor actually used by these companies, we have used the diesel fuel input in our calculation of FMV, where possible. However, for some companies this was not possible and, instead, we valued the electrical output of the generators as the best available information.

Comment 17: Labor Hours

Petitioner argues that the Department should adjust labor hours used to make the electronic lighter caps because, at verification, the Department noted differences for the total number of hours worked by unskilled labor in the metal workshop.

Cli-Claque maintains that no adjustment should be made to its labor calculations for the metal workshop and that petitioner's comment on this point is based on a misreading of the verification report. According to Cli-Claque, as stated in the verification report, the labor hours per month for the metal workshop were calculated by multiplying the number of days per month a machine was in operation by the average labor hours worked per day. The difference, cited by petitioner, was not a discrepancy between the data reported and the figure verified but the difference between the skilled and unskilled hours worked per day in the metal workshop.

DOC Position

We agree with respondent. Our discussion in the verification report was to note only the difference in the number of hours worked between skilled and unskilled workers in the metal workshop. We did not note any discrepancies in the information we reviewed.

Comment 18: Electroplating

Petitioner argues that the Department should assign appropriate surrogate values for electroplating as best information available since electroplating was done by a non-market economy source. In addition, petitioner argues that Cli-Claque likely incurred transportation charges for shipping lighter caps for electroplating. Therefore, surrogate values for these transportation charges should also be included.

Respondent argues that electroplating merely adds a finish to caps produced by Cli-Claque. The Department reviewed the invoice provided by the subcontractor at verification and found that the charges were insignificant.

DOC Position

Based on information reviewed at verification, we agree with respondent that electroplating was an insignificant cost, and would be included in the surrogate overhead value. We disagree with petitioner's characterization of the Department's practice, *i.e.*, if a material is used in the production process, it should be included in the direct materials calculation. As stated in *Saccharin*, it is standard practice to classify certain inputs as variable overhead. Electroplating is infrequently used in the production process, is small in value relative to the total cost of manufacturing the product and, hence, would be included in the surrogate country overhead value. Therefore, we have not valued it separately.

Gao (HK) Hua Fa Industrial Co. Ltd.(Gao Yao)

Comment 19: Market Economy Inputs Originally Reported in Renminbi (RMB)

Petitioner states that the Department should use surrogate values for all inputs Gao Yao reported to the Department in Renminbi (RMB), but actually purchased in Hong Kong dollars. Petitioner argues that Gao Yao incorrectly reported purchases based on Gao Yao's calculation of the exchange rate.

Gao Yao argues that certain accounting records are maintained in RMB but this should not be grounds for using surrogate values. Gao Yao states that the discrepancy caused by its calculation of the exchange rate had a negligible effect on import prices, and the Department should use market economy prices for material inputs purchased from market economy suppliers.

DOC Position

When a respondent purchases imports from a market economy and pays in a market economy currency, the Department prefers using the actual price of that input rather than a surrogate value, (see, e.g., *Final Determinations of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the PRC,* (56 FR 55271, 55275, October 25, 1991), upheld *Lasko Metal Products* v. U.S. 810 F. Sup. 314, *Aff'd,* 43 F. 3rd 1142 (Fed. Cir. 1994)). For purposes of our final determination, we have used actual, verified prices for those inputs which were purchased by Gao Yao from a market economy supplier and paid for in market economy currencies.

Comment 20: Natural Gas

Petitioner argues that the Department should include natural gas in its calculation of Gao Yao's FMV since it reported that it uses natural gas.

Gao Yao states that the reference in its response to ''natural gas'' was incorrect. The input in question was butane—a factor which was separately reported. According to Gao Yao, the Department verified that it did not use natural gas as an energy source.

DOC Position

We agree with respondent. At verification, we determined no natural gas was being used in the production process.

Comment 21: Port Handling Charges and Rejected Lighters

Petitioner also asserts that the Department should adjust Gao Yao's production information to reflect lighters which failed internal quality control inspection.

DOC Position

We agree with petitioner. We have adjusted our calculation of FMV to account for lighters which were unsaleable.

Guangdong Light Industrial Products Import and Export Corporation (GLIP)

Comment 22: Governmental Ownership and Independence

Petitioner states that GLIP should not be granted a separate rate because a portion of the company's shares are held by a governmental entity. Petitioner argues that, while no evidence of governmental interference was found during verification, the fact remains that shares of the company are held by the government and, since GLIP only transformed to a shareholding company shortly after the POI, circumstances may change inciting the State Asset Management Bureau to take actions which interfere in the company's operations.

Petitioner states further that not enough is known about the level of governmental control exerted over GLIP during the POI, when the company was still owned by ''all the people.'' Accordingly, petitioner argues that GLIP should not be granted a separate rate in this investigation and should be assigned the ''PRC-Wide rate.''

DOC Position

During verification, the Department examined all correspondence files pertaining to the period prior to the POI, the POI, and the period after the POI. We also examined bank records during the POI and found no evidence of government control over the company activities. In addition, based on discussions with GLIP officials, described in detail in our verification report, that GLIP's management has not changed since the company's transformation from a company owned by ''all the people'' to a company owned by shareholders. It is not the Department's practice to deny eligibility for a separate rate based on speculation that a government might someday try to influence a company's operations. If this did occur, a future administrative review would analyze such government influence in its determination of whether to grant a separate rate for this company. Currently, based on our *de facto* analysis of governmental control over the company's export activities, we conclude that GLIP is independent of government control. (*See* Separate Rates discussion).

Comment 23: Cost Factors Should be Adjusted for Variances

Petitioner states that the Department should adjust the standard usage amounts for materials and labor when calculating FMV for the lighters sold by GLIP to account for variances from standard observed at verification. Petitioner additionally states that since warehouse withdrawal tickets are the only method for establishing variances for material usage, the Department should use these tickets to calculate variances for material usage.

DOC Position

We have adjusted labor figures to account for variances observed during verification for purposes of our final determination. We have based material usage on reported amounts, however, because the variances calculated using warehouse tickets appeared to be largely influenced by the amount of raw materials in work-in-process. Since the producer of lighters did not maintain records of raw materials inventory in work-in-process, it is not possible to calculate actual consumption.

Comment 24: Butane Consumption

Petitioner states that the Department should use gross consumption figures for butane in calculating GLIP's FMV for purposes of its final determination.

DOC Position

We agree with petitioner, and have made this adjustment for purposes of our final determination with respect to GLIP. Factory officials stated at the beginning of verification that they had inadvertently reported the net amount of butane in the final product in the company's response to the Department's antidumping questionnaire rather than the gross amount of butane used in producing the lighters. We verified the correct amounts and have used them in this determination.

China National Overseas Trading Corporation (COTCO)

Comment 25: Foreign Exchange Controls

Petitioner argues that COTCO should not be granted a separate rate because the company is subject to foreign currency controls which are indicative of a lack of independence from the central government. Petitioner states that in *Sparklers,* the Department stated that for an exporter to be granted a separate rate the company must (1) set its own export prices, and (2) be allowed to keep the proceeds from its sales. Petitioner cites to the Department's verification report, where management states that COTCO must ask permission to refund foreign currency on returned merchandise. Petitioner contends this statement is indicative of a lack of control over earnings and, consequently, a lack of independence.

Respondent argues that there is ample evidence of COTCO's independence from government control. Respondent adds that Department officials verified that there were no returns or refunds for any subject merchandise during the POI.

DOC Position

Although COTCO must receive permission to purchase foreign currency, during verification we viewed evidence that COTCO regularly purchases foreign exchange to pay for imported merchandise. We saw no evidence of returned merchandise; the statement by COTCO officials concerning returned merchandise was in response to a hypothetical question from Department officials. The PRC's complex system of foreign exchange controls is not *per se* evidence of governmental control (*see, e.g., Coumarin*). The body of evidence gathered at verification indicates that COTCO retains control over its earnings, both foreign and domestic.

Comment 26: Affiliated Companies

Petitioner states that the companies which are affiliated with COTCO did not cooperate in this investigation and it should be assumed that they had unreported lighter sales to U.S. customers during the POI. Accordingly, petitioner argues, COTCO should not be granted a separate rate, and should be assigned the ''PRC-Wide'' rate as punitive BIA.

Respondent states that COTCO included information for all lighter sales to U.S. customers in its response and that during verification Department officials requested information to confirm that all sales had been reported. Respondent argues that a separate rate based on its verified response is appropriate in the Department's final determination.

DOC Position

We agree with respondent. At verification, consistent with normal verification practices, we verified that no COTCO affiliate, except for the one under investigation, sold the subject merchandise during the POI. COTCO officials cooperated with Department verifiers to the best of their ability and we are satisfied that our tests of the completeness of COTCO's response demonstrates that all sales of subject merchandise have been included.

Comment 27: Shipment After POI

Petitioner states that a shipment made by COTCO after the POI and for which there was no sales contract should be assumed to have been a sale during the POI and should be included in the company's sales listing.

Respondent states that all sales made during the POI were included in the data submitted to the Department, and that sales made after the POI should not be included in the Department's antidumping duty rate calculation.

DOC Position

We agree with respondent. We saw no evidence during verification that the sale relating to the shipment in question was made during the POI. During verification, we viewed another example of a sale by COTCO where a contract was not generated prior to shipment of the merchandise. Given the date of shipment, the invoice date, and based on statements by COTCO officials, we believe the sale should not be included in COTCO's sales data for the POI.

Continuation of Suspension of Liquidation

For Gao Yao, we calculated a zero margin. Consistent with *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic of China* (59 FR 55625, November 8, 1994), merchandise that is sold by Gao Yao but manufactured by other producers will not receive the zero margin. Instead, such entries will be subject to the ''PRC-wide'' margin.

In accordance with sections 733(d)(1) and 735(c)(4)(B) of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of disposable pocket lighters from the PRC, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage	Critical circumstances
China National Overseas Trading Corporation*.	0	Affirmative.
Cli-Claque Company Ltd.	6.15	Affirmative.
Gao Yao (HK) Hua Fa Industrial Co., Ltd.	0	Negative.
Guangdong Light Industrial Products Import and Export Corporation.	27.91	Negative.
PolyCity Industrial, Ltd.	5.50	Negative.
PRC-Wide	197.85	Affirmative.

*This company has not disclosed for the public record the identity of its supplier or suppliers in the PRC. Upon public disclosure of this information to the Department, we will notify the Customs Service that sales through certain supply channels have an LTFV margin of zero and thus an exclusion from any order resulting from this investigation. Until and unless such disclosure is made, all entries will be subject to the ''PRC-wide'' deposit rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine whether these imports are causing material injury, or threat of material injury, to the industry in the United States, within 45 days. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or cancelled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is published pursuant to section 735(d) of the Act and 19 CFR 353.20(a)(4).

Dated: April 27, 1995.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 95–11161 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 042795C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's Groundfish Management Team (GMT) will hold public meetings on May 23–24, 1995, and May 30 through June 1, 1995.

ADDRESSES: Pacific Fishery Management Council; 2130 SW Fifth Avenue, Suite 224; Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The first meeting will be held in Room 370 West of NMFS Northwest Fisheries Science Center Montlake Laboratory, 2725 Montlake Boulevard East, Seattle, WA. The meeting will begin at 8 a.m. on both days. The May 23 session will not adjourn until the business for the day is completed and may go into the evening. The May 24 session will adjourn by 4 p.m.

The purpose of this meeting is to review draft economic reports and to prepare for the June 27–29 Council meeting in Clackamas, Oregon.

The second meeting, a joint meeting of the GMT and the Groundfish Subcommittee of the Scientific and Statistical Committee, will be held May 30 through June 1, 1995, in the conference room of NMFS Southwest Fisheries Science Center, 3150 Paradise Drive, Tiburon, California. The meeting will begin at 1 p.m. on May 30, and at 8 a.m. on May 31 and on June 1. The sessions are expected to end each day about 5 p.m. This joint meeting, which is held annually, will be devoted to preparation of the groundfish stock assessments that will be presented to the Council in August 1995.

Both meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Michelle Perry Sailer at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 28, 1995.

Richard W. Surdi,

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

[FR Doc. 95–11071 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 042695B]

Marine Mammals

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

ACTION: Issuance of public display permit no. 952

SUMMARY: Notice is hereby given that Mr. Emil Popescu (P585), has been issued a permit for public display purposes.

ADDRESSES: The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (310/980–4016);

SUPPLEMENTARY INFORMATION: On Wednesday, March 22, 1995, notice was published in the **Federal Register** (60 FR 15128) that an application had been filed by Emil Popescu, Las Vegas, NV. A public display permit was requested to import three Patagonian sea lions into the United States from France for public display purposes. The requested permit has been issued subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the conditions set forth therein.

Dated: April 28, 1995.

Ann D. Terbush,

Chief, Permits & Documentation Division, National Marine Fisheries Service.

[FR Doc. 95–11072 Filed 5–4–95; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List a military resale commodity, commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: June 5, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 14, December 9, 1994, January 13, March 10, and 17, 1995, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (59 FR 56467, 63764, 60 FR 3196, 13122, 14427) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the military resale commodity, commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the military resale commodity, commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodity, commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the military resale commodity, commodities and services.

3. The action will result in authorizing small entities to furnish the military resale commodity, commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodity, commodities and services proposed for addition to the Procurement List.

Accordingly, the following military resale commodity, commodities and services are hereby added to the Procurement List:

Military Resale Commodity

Mitt, Barbecue
M.R. 891

Commodities

Curtain, Smoke, Portable
4210–01–306–7827

Test Kit, Oil Condition
6630–01–096–4792

Services

Administrative Services, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina

Janitorial/Custodial, Basewide, Fort Drum, New York

Laundry Service, Department of Veterans Affairs Medical Center, 7305 N. Military Trail, West Palm Beach, Florida

Switchboard Operation, Department of Veterans Affairs Medical Center, 2300 Ramsay Street, Fayetteville, North Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–11121 Filed 5–4–95; 8:45 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 5, 1995.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi
NPA: Goodwill Industries of Mississippi, Jackson, Mississippi

Grounds Maintenance, Department of the Army, Television and Audio Support Activities, Mather Air Force Base, California
NPA: Woodland Rehabilitation and Employment Industries, Inc., Woodland, California

Operation of Postal Service Center, Fairchild Air Force Base, Washington
NPA: Pre-Vocational Training Center, Spokane, Washington

Recycling Service, Department of Veterans Affairs Medical Center, 1500 East Woodrow Wilson Drive, Jackson, Mississippi
NPA: Goodwill Industries of Mississippi, Jackson, Mississippi

Scrap Breakdown, Defense Reutilization and Marketing Office, Kelly Air Force Base, Texas
NPA: Goodwill Industries of San Antonio, San Antonio, Texas

Beverly L. Milkman,

Executive Director.

[FR Doc. 95–11122 Filed 5–4–95; 8:45 am]

BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Sixth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the ''Commodity Futures Trading Commission Agricultural Advisory Committee.'' The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. § 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, and lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the committee.

Commissioner Joseph B. Dial serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581.

Issued in Washington, DC on May 2, 1995, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–11125 Filed 5–4–95; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0017]

Clearance Request for Jewel Bearings and Related Items Certificate Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0017).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Jewel Bearings and Related Items Certificate Requirements.

FOR FURTHER INFORMATION CONTACT:

Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers recordkeeping and information collection requirements regarding the need for and use of jewel bearings and related items. The requirements are necessary to ensure contractor compliance with contract clauses regarding required usage of Government-owned sources of supplies for such items.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 6.75 minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 13,500; responses per respondent, 20; total annual responses, 270,000; preparation hours per response, .1125; and total response burden hours, 30,375.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0017, Jewel Bearings and Related Items Certificate Requirements, in all correspondence.

Dated: April 24, 1995.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 95–11088 Filed 5–4–95; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF EDUCATION

Historically Black Colleges and Universities Capital Financing Advisory Committee; Meeting

AGENCY: Historically Black Colleges and Universities Capital Financing Advisory Committee; Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Historically Black Colleges and Universities Capital Financing Advisory Committee. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: May 12, 1995, 9:00 am–12:00 am.

ADDRESSES: U.S. Department of Education, Barnard Auditorium—Room 2413, Federal Office Building 10, 600 Independence Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Lawrence P. Grayson, Executive Director, Historically Black Colleges and Universities Capital Financing Advisory Committee, U.S. Department of Education, Washington, DC 20202–5139, telephone (202) 260–3259.

SUPPLEMENTARY INFORMATION: The Historically Black Colleges and Universities Capital Financing Advisory Committee is established under section 727 of the Higher Education Act of 1965, as amended in 1992 (20 U.S.C. 1132c-6). The Council is established to provide advice and counsel to the Secretary of Education and the designated bonding authority for the Historically Black Colleges and Universities Capital Financing Program as to the most effective and efficient means of implementing construction financing on historically Black college and university campuses and to advise Congress regarding the progress made in implementing the program.

The meeting of the Committee is open to the public. The agenda includes a briefing by members of the designated bonding authority on progress to date in establishing the program.

The pubic is given less than 15 days notice of the meeting because of the need to brief the members of the Board and the unavailability of other suitable dates.

Records are kept of all Committee proceedings, and are available for pubic inspection at the office of the Historically Black Colleges and Universities Capital Financing Advisory Committee, U.S. Department of Education, Washington, DC 20202–5139, from the hours of 9:00 am to 4:00 pm.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–11226 Filed 5–4–95; 8:45 am]

BILLING CODE 4401–01–M

DEPARTMENT OF ENERGY

Notice of Pre-Scoping Workshop for the Stockpile Stewardship and Management Programmatic Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of Pre-Scoping Workshop for the Stockpile Stewardship and Management Programmatic Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) announces that it will conduct a pre-scoping workshop for the Stockpile Stewardship and Management (SS&M) Programmatic Environmental Impact Statement (PEIS). The purpose of the pre-scoping workshop is to provide the public with an opportunity to present comments, ask questions, and discuss concerns regarding SS&M activities with DOE officials. An interactive format will be used for the workshop. Input from the pre-scoping workshop will assist DOE in formulating the notice of intent (NOI) for the SS&M PEIS, and refining alternatives for consideration in the PEIS.

The primary goal of the SS&M program is to provide high confidence in the safety, security, and reliability of the nation's stockpile and to ensure the effectiveness of the nuclear deterrent while supporting arms-control and nonproliferation policy. Stockpile Stewardship includes activities required to maintain a high level of confidence in the safety, reliability, and performance of nuclear weapons in the absence of underground nuclear testing, and to be prepared to resume nuclear testing if so directed by the President. Stockpile Management activities include dismantlement, maintenance, evaluation, and repair or replacement of weapons in the existing stockpile.

The workshop will afford interested parties the opportunity to offer suggestions regarding the appropriate alternatives for performing the functions necessary to carry out the Department's stockpile stewardship and management missions. Through the National Environmental Policy Act (NEPA) review process, DOE proposes to develop a comprehensive strategy to establish a long-range plan for Stockpile Stewardship and Management.

DATES: The workshop will be held on May 19, 1995, in the Main Auditorium of the DOE Forrestal Building (1000 Independence Ave, S.E., Washington D.C.) from 9:00 a.m.–4:00 p.m. Members of the public who would like to attend the pre-scoping workshop are asked to call the Office of Reconfiguration's toll-free telephone number at 1–800–776–2765 to pre-register.

ADDRESSES: General questions concerning the SS&M program can be asked by calling the toll-free telephone number, or by writing to: Stephen Sohinki, Director, Office of Reconfiguration, U.S. Department of Energy, P.O. Box 3417, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: For general information on the DOE National Environmental Policy Act (NEPA) process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–4600 or 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

In January 1991, the Secretary of Energy announced that the Department would prepare a PEIS examining alternatives for the reconfiguration of the Department's nuclear weapons complex (the Complex). The framework for the Reconfiguration PEIS was described in the January 1991 *Nuclear Weapons Complex Reconfiguration Study* (Reconfiguration Study), a detailed examination of alternatives for the future Complex. Because of the significant changes in the world since January 1991, especially with regard to projected future requirements for the United States' nuclear weapons stockpile, the Department concluded in October 1994 that the framework described in the Reconfiguration Study no longer fit current circumstances or supported any realistic proposal for reconfiguration of the Complex (see 59 FR 54175 (October 28, 1994)). Contributing factors to that conclusion included public comments at the September-October 1993 Reconfiguration PEIS scoping meetings, the fact that no production of new nuclear weapons was required for the foreseeable future, budget constraints, and the Department's decision to prepare a separate PEIS on Storage and Disposition of Weapons-Usable Fissile Nuclear Materials (Notice of Intent published June 21, 1994, 59 FR 17344).

As a result of these changed circumstances, the Department separated the Reconfiguration PEIS into two PEISs: (1) a Tritium Supply and Recycling PEIS to be completed by November 1995; and (2) a Stockpile Stewardship and Management PEIS. The Draft PEIS for Tritium Supply and Recycling has been completed and issued to the public (60 FR 14433 (March 17, 1995)), public hearings were held in April 1995, and a Final PEIS is expected in October 1995.

With regard to the SS&M PEIS, during the past six months the Department has been developing the new framework to support the SS&M program. That preliminary framework, which is described in a document entitled ''The Stockpile Stewardship and Management Program'', is now available on the internet under DOE's Home Page for Defense Programs. That document is also being mailed to those individuals who had previously requested information on the SS&M program. Other individuals who would like to receive that document can contact the Office of Reconfiguration at the address listed above or by calling the program's toll free number. At the pre-scoping workshop, the framework contained in ''The Stockpile Stewardship and Management Program'' will be presented by DOE officials, and the public will be provided the opportunity to present comments, ask questions, and discuss concerns with DOE officials. Some general information regarding the SS&M framework is provided below, along with a description of the format envisioned for the interactive pre-scoping workshop.

Purpose and Need for the SS&M Program

By law [the Atomic Energy Act of 1954, as amended, 42 USC 2011 *et seq.*], DOE is charged with providing nuclear weapons to support the United States nuclear deterrent policy. The mission of the DOE nuclear weapons complex is to provide the nation with safe, secure, and reliable nuclear weapons and components so that an effective nuclear deterrent can be maintained into the foreseeable future, and to accomplish this in a way that protects the environment as well as the health and safety of workers and the public.

Recent changes in national security needs have necessitated corresponding changes in the way the Department must meet its responsibilities regarding the nation's nuclear weapons. As a result of international arms-control agreements (in particular the START I treaty and the START II protocol) and unilateral decisions by the United States, the nation's stockpile will be significantly reduced by the year 2003. Consequently, the nation has halted the development of new nuclear weapons, has begun closing portions of the Complex, and is considering further consolidation or downsizing of its remaining elements. In addition, the nation is observing a moratorium on nuclear testing and is pursuing a comprehensive test ban treaty.

However, international dangers remain and, as the President has emphasized, nuclear deterrence will continue to be a cornerstone of United States national security policy. Thus, the Department's responsibilities for ensuring the safety, security, and reliability of the nation's nuclear weapons stockpile will also continue for the foreseeable future.

Because of the moratorium on nuclear testing, the termination of new weapons development, and the closure of production facilities, a new approach to ensuring confidence in the stockpile is needed. In announcing the extension of the nuclear testing moratorium (July 1993), President Clinton reaffirmed the importance of maintaining confidence in the enduring U.S. nuclear stockpile and the need to assure that the nation's nuclear deterrent remains unquestioned during a test ban. By Presidential Decision Directive and act of Congress (P.L. 103–160), the Department of Energy was directed to ''establish a stewardship program to ensure the preservation of the core intellectual and technical competencies of the U.S. in nuclear weapons.''

This new approach must more heavily rely on scientific understanding and expert judgment to predict, identify, and correct problems affecting the safety and reliability of the stockpile. This program is essential if the nation is to properly safeguard its nuclear weapons and maintain an unquestioned nuclear deterrent.

The Stockpile Stewardship and Management Program is being developed to meet the challenges involved in ensuring the safety, reliability, and performance of the enduring stockpile. Three particular challenges must be met:

- Fully supporting, at all times, the nation's nuclear deterrent with safe, secure, and reliable nuclear weapons, while transforming the nuclear weapons complex (laboratories and production facilities) to one that is more appropriate for the smaller enduring stockpile.
- Preserving the core intellectual and technical competencies of the weapons laboratories. Without nuclear testing, confidence in the nation's nuclear deterrent will rest in large part with confidence in the competency of the people who must make the scientific and technical judgments related to the safety and reliability of nuclear weapons.
- Ensuring that the activities needed to maintain the nation's nuclear deterrent are consistent with the nation's arms-control and nonproliferation objectives.

DOE Nuclear Weapons Complex

The current DOE nuclear weapons complex consists of 8 major facilities located in 7 states. Major facilities, and their primary responsibilities within the Complex, are listed in Table 1. Currently, the Complex maintains the capabilities to design and manufacture nuclear weapons; provides surveillance of and maintains nuclear weapons in the stockpile; and retires and disposes of nuclear weapons.

Table 1—The DOE Nuclear Weapons Complex

Pantex Plant (Amarillo, Texas)—Dismantles retired weapons; fabricates high explosives components; assembles high explosives, nuclear components, and nonnuclear components into nuclear weapons; repairs and modifies weapons; and evaluates and performs nonnuclear testing of nuclear weapons.

Savannah River Site (SRS) (Aiken, South Carolina)—Tritium loading/unloading and surveillance of reservoirs.

Y–12 Plant (Oak Ridge, Tennessee)—Maintains the capability to produce and assemble uranium and lithium components; recovers materials from fabrication process and retired weapons; produces nonnuclear weapon components.

Kansas City Plant (KCP) (Kansas City, Missouri)—Manufactures nonnuclear weapons components.

Lawrence Livermore National Laboratory (LLNL) (Livermore, California)—Research and development of nuclear weapons; designs and tests advanced technology concepts; maintains weapons design program; maintains the capability to produce nuclear components.

Los Alamos National Laboratory (LANL) (Los Alamos, New Mexico)—Research and development of nuclear weapons; designs and tests advanced technology concepts; maintains weapons design program; maintains the capability to produce nuclear components.

Sandia National Laboratories (SNL) (Albuquerque, New Mexico)—System engineering of nuclear weapons; designs and develops nonnuclear components; field and laboratory nonnuclear testing; and manufactures nonnuclear weapons components.

Nevada Test Site (NTS) (Las Vegas, Nevada)—Maintains capability to conduct underground nuclear testing.

PEIS Alternatives

The Department's preliminary views concerning consideration of alternatives for both the Stockpile Management and the Stockpile Stewardship program elements are described below:

Stockpile Management

Stockpile Management activities include dismantlement, maintenance, evaluation, and repair or replacement of weapons in the existing stockpile. In the past, a large weapons production complex provided the capability and capacity to rapidly fix problems in the stockpile. However, the existing production complex may be inefficient and ineffective for a much smaller enduring stockpile. Therefore, one of the primary goals of the Stockpile Management proposal will be to downsize and/or consolidate functions to provide an effective and efficient production capability for the smaller stockpile.

To ensure that the Department will be able to carry out its stockpile management responsibilities, the following general functional capabilities are needed and are expected to be addressed in the SS&M PEIS:

- Nuclear weapons assembly/disassembly and surveillance.
- High explosives fabrication and surveillance.
- Nonnuclear component fabrication and surveillance.
- Nuclear component fabrication and surveillance.

Reasonable alternatives for each of the functional capabilities will be developed from the list of sites in Table 1. Under the no-action alternative, the functions would remain at the locations identified in Table 1. In addition to the no-action alternative, the PEIS is also expected to assess the alternatives of downsizing (and upgrading if necessary) facilities at the no-action sites, and evaluate transferring or consolidating the functions to other sites listed in Table 1 that have existing facilities which could be used for that functional capability.

Stockpile Stewardship

Stockpile Stewardship includes activities required to maintain a high level of confidence in the safety, reliability, and performance of nuclear weapons in the absence of underground nuclear testing, and to be prepared to resume testing if so directed by the President. While the nation's nuclear weapons stockpile is currently judged to be safe, secure, and reliable, the average age of the stockpile has never significantly exceeded the current age of 12 to 13 years. Because the Department cannot predict with certainty when age-related changes affecting weapon safety or reliability will occur, a conservative assumption would be that problems will arise more frequently as the weapons age beyond their original 20- to 25-year design lifetimes.

Historically, nuclear testing has provided unambiguous confidence in the safety and performance of weapons in the stockpile. Without underground nuclear testing, the Department must rely on aboveground experimental and computational capabilities, especially in weapons physics, to predict the consequences of the complex problems that are likely to occur in an aging stockpile.

Currently, enhanced aboveground experimental and computational capabilities are needed to assess and predict the consequences of these problems. An improved science-based program with enhanced experimental and computational capabilities is necessary to maintain confidence in the safety and performance of the nation's stockpile without nuclear testing. This program must be technically challenging so that it will attract the high-quality scientific and technical talent needed for future stewardship of the stockpile.

Substantial advances in experimental and computational capabilities are needed to fill in those areas of nuclear weapon science that are incomplete, particularly gaps in our understanding of physics and gaps in the data needed for computational simulations of weapons performance and model-based assessments of safety and reliability. Upgraded or new experimental capabilities are required to validate improved or new computational models.

Without these enhanced capabilities, the Department will lack the ability to evaluate some safety and performance issues, which could significantly affect the stockpile. Consequently, desired improvements in weapon safety and security might be sacrificed because of an inability to certify their performance. It is also possible that, without these enhanced capabilities, some nuclear components exhibiting changes in composition or structure would have to be retired because the Department would not be able to certify the acceptability of repaired or modified components.

Stockpile stewardship can be broken down into three broad functional areas:

- Weapons Physics
- Materials Surveillance
- Computational Capabilities

In addition to the no-action alternative of relying on existing capabilities in each of these functional areas, the PEIS will assess new or upgraded facilities in each functional area to carry out the Stockpile Stewardship mission. Only the three weapons laboratories (LANL, LLNL, and SNL) and the NTS are expected to be considered in the development of reasonable Stockpile Stewardship site alternatives. The existing configuration of these sites and any potential new facilities or significant upgrades to facilities will be discussed.

SS&M Program Foundational Framework

In the SS&M program, DOE will:

- Emphasize compliance with applicable laws and regulations, and accepted practices regarding industrial and weapons safety; safeguarding the health of Complex workers and the general public; protecting the environment; and ensuring the security of nuclear materials and weapons components.
- Safely and reliably maintain the nuclear weapons stockpile as directed by the President and mandated by Congress.
- Minimize costs associated with the weapons stockpile.
- Minimize the number and/or size of weapons production sites.
- Maximize the transfer of nonnuclear materials production activities to the private sector.
- Maintain core intellectual and technical competencies in nuclear weapons.
- Sustain confidence in safety, reliability, and performance of the stockpile in the absence of underground nuclear testing.
- Minimize the use of hazardous materials and the number and volume of waste streams.
- Provide for proper disposal of hazardous, non-hazardous, and radioactive waste.

PEIS Decisions

The PEIS and supporting cost, technical, and schedule studies will be prepared for the SS&M program. The PEIS and the other studies will support the following decisions:

- Identify the future components of the SS&M program; and

• Determine the configuration of the nuclear weapons complex to accomplish the SS&M program requirements.

Pre-Scoping Workshop Format

The Department intends to hold a plenary session at the beginning of the workshop in which DOE officials will more fully explain the framework for the proposed SS&M program, including preliminary alternatives for both Stockpile Management and Stockpile Stewardship. Following the plenary session and any clarification and discussion that results, the Department intends for the participants to break out into two smaller groups— one for Stockpile Stewardship and one for Stockpile Management— to allow for more specific discussion. Arrangements will be made so that interested members of the public may attend both break out sessions if they desire.

Next Steps

Following the pre-scoping workshop, DOE will refine, as necessary, the SS&M framework and proposed alternatives, prepare a Notice of Intent for the SS&M PEIS, and hold public scoping meetings (to be conducted as interactive workshops) regarding the alternatives to be evaluated in the SS&M PEIS. DOE intends to announce the location, date and time for these scoping meetings/workshops in a Notice in the **Federal Register**, and by other means as appropriate. The announcement will be at least two weeks prior to any meetings.

Issued in Washington, D.C. this 2nd day of May, 1995, for the United States Department of Energy.

Victor H. Reis,

Assistant Secretary for Defense Programs.

[FR Doc. 95–11162 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

EERE-Denver Regional Support Office; Notice of Solicitation

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications; DE-PS48–95R810534 heavy duty state/municipal vehicle alternative fuel demonstration.

SUMMARY: The Department of Energy, Denver Regional Support Office, pursuant to 10 CFR 600 announces its intention to issue a competitive solicitation and make financial assistance awards to evaluate alternative fuels in transportation in response to the Alternative Motor Fuels Act of 1988 (AMFA) and the provisions of Public Law 102–486, The Energy Policy Act of 1992.

AVAILABILITY OF THE SOLICITATION: To obtain a copy of the solicitation, once it is issued on or about May 1, 1995, write to the U.S. Department of Energy, Denver Support Office, 2801 Youngfield St., Suite 380, Golden, CO 80401, Attn: Louise S. Urgo, FY 1995, Heavy Duty State/Municipal Vehicle Alternative Fuel Demonstration Solicitation. Only written requests for the solicitation will be honored.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE) is issuing a solicitation to state energy offices, inviting them to apply for the Heavy Duty State/Municipal Vehicle Alternative Fuel Demonstration Program. Only one application will be accepted from each state. The participating state energy offices will coordinate and conduct a heavy duty municipal vehicle project to introduce alternative fuel Original Equipment Manufacturer (OEM) vehicles for operation by state governments, local school districts, and municipalities. The incremental costs over conventional vehicles for up to four (4) OEM alternative fuel heavy duty vehicles per project will be funded by DOE. The types of vehicles to be considered are those used directly by a state or a local agency or for the sole purpose of supporting a state or local agency. Transit buses are excluded. Vehicles will be fueled with ethanol, methanol, natural gas, propane or biodiesel. The DOE Support Offices will coordinate this program's activities in conjunction and cooperation with the state energy offices, providing assistance and direction to interested participants. The state energy offices, municipalities, and local school districts will identify refueling facilities. They are encouraged to invite local utilities or fuel suppliers to participate by investing in the development of refueling facilities. The award recipients will be responsible for the collection and reporting of data/information as specified by DOE on alternative fuel and ''control'' vehicles over a five year period. It is the intent of this solicitation is to provide states with practical experience in the use of alternative fuel heavy duty vehicles to promote their use and to increase awareness of the availability and benefits of alternative fuel vehicles.

FUND AVAILABILITY: Up to $1,200,000 is available to fund financial assistance awards. Awards will be limited to $200,000 each. Only one application will be accepted from each state. The initial project and budget period will be nine months from the date of award.

ELIGIBILITY: The DOE, Office of Energy Efficiency and Renewable Energy, Office of Alternative Fuels, is requesting applications for a demonstration of heavy duty municipal alternative fuel vehicles from the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, and any territory of possession of the United States. Interested municipalities, and local school districts should contact the appropriate state office for applications for subawads. Financial Assistance for this solicitation is authorized by the DOE Reorganization Act, P.L. 95–91, and the DOE Financial Assistance Regulations, 10 CFR 600.

REVIEW, EVALUATION AND AWARD: Initial review for completeness will be performed at the Support Offices. The applications will be evaluated by the Office of Technical Assistance and the Office of Alternative Fuels according to the criteria set forth in the solicitation. It is currently anticipated that the review of applications will begin on or about July 1, 1995. Selections will be made by mid August, with anticipated award issuance by September 30, 1995.

Awards may be either grants or cooperative agreements, depending on amount of substantial involvement anticipated between the Department of Energy and the recipient during performance of the contemplated activity.

FOR FURTHER INFORMATION CONTACT: U. S. Department of Energy, Denver Regional Support Office, 2801 Youngfield St., Golden, CO., 80201, Attention: Louise S. Urgo, Contracting Officer.

Issued in Golden, Colorado on April 26, 1995.

John W. Meeker,

Chief, Procurement, Go.

[FR Doc. 95–11163 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE DOCKET NO. 95–22–NG]

Progas U.S.A., Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting ProGas U.S.A., Inc. authorization to import up to 800 Bcf and to export up to 200 Bcf of natural gas from and to Canada. The term of the authorization is

for a period of two years, beginning on April 1, 1995.

ProGas U.S.A., Inc.'s order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 24, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–11165 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 94–91–LNG]

Ecoelectrica, L.P.; Order Granting Long-Term Authorization To Import Natural Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has granted EcoElectrica, L.P. (EcoElectrica) authorization to import to Puerto Rico, from various countries, up to 130 Bcf per year of liquefied natural gas (LNG) beginning on October 1, 1997, and continuing through December 31, 2037. EcoElectrica plans to import these volumes of LNG near Ponce, Puerto Rico, at LNG facilities to be constructed at Guayanilla Bay.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 19, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–11164 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 95–23–NG]

Trading & Transportation Management, Inc.; Order Granting Blanket Authorization to Import and Export Natural Gas From and to Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Trading & Transportation Management, Inc. (TTMI) authorization to import up to 200 Bcf and to export up to 200 Bcf of natural gas from and to Canada, and to import up to 200 Bcf and to export up to 200 Bcf of natural gas from and to Mexico. The term of the authorization is for a period of two years, beginning on the date of first import or export delivery.

TTMI's order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., April 26, 1995.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 95–11166 Filed 5–4–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ES95–30–000]

Union Electric Company; Notice of Application

May 1, 1995.

Take notice that on April 26, 1995, Union Electric Company filed an application under Section 204 of the Federal Power Act seeking an order authorizing the issuance of short-term, unsecured promissory notes in the aggregate amount of up to $600 million at any one time, of which up to $50 million at any one time may be in the form of commercial paper. The notes will be issued on or before July 31, 1997, and have a final maturity date not later than July 31, 1998.

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, 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 May 25, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11114 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–255–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 1, 1995.

Take notice that on April 27, 1995 Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following revised tariff sheets proposed to be effective May 4, 1995:

Second Revised Sheet No. 191
Second Revised Sheet No. 192

Trunkline states that this filing is being made in compliance with the Commission's Final Rule (Order No. 577) issued March 29, 1995 in Docket No. RM95–5–000. Specifically, the revisions: (1) Extend the maximum term of pre-arranged capacity releases at less than the maximum rate that are exempt from bidding requirements to one full calendar month; (2) provide that pre-arranged capacity releases at maximum rate are exempt from bidding regardless of the term; and (3) reduce the restriction period from thirty days to twenty-eight days for re-releasing capacity exempt from advance posting and bidding to the same pre-arranged shipper.

Trunkline states that copies of this filing are being mailed to affected shippers 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, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before May 8, 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.

[FR Doc. 95–11113 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–942–000]

New England Power Company; Notice of Filing

May 1, 1995.

Take notice that on April 24, 1995, New England Power Company, tendered for filing a revised Service Agreement between New England Power Company and Braintree Electric Light Department for transmission service under NEP's FERC Electric Tariff, Original Volume No. 3.

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 May 15, 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. 95–11112 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–941–000]

Florida Power Corporation; Notice of Filing

May 1, 1995.

Take notice that on April 24, 1995, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by Florida Power pursuant to interchange contracts as follows:

Rate schedule	Customer
65	Southern Power Administration.
80	Tampa Electric Company.
81	Florida Power & Light Company.
82	City of Homestead.
86	Orlando Utilities Commission.
88	Gainesville Regional Utility.
91	Jacksonville Electric Authority.
92	City of Lakeland.
94	Kissimmee Utility Authority.
95	City of St. Cloud.
100	Fort Pierce Utilities Authority.
101	City of Lake Worth.
102	Florida Power & Light Company.
103	City of Starke.
104	City of New Smyrna Beach.
105	Florida Municipal Power Agency.
108	City of Key West.
119	Reedy Creek Improvement District.
122	City of Tallahassee.
128	Seminole Electric Cooperative, Inc.
134	City of New Smyrna Beach.
139	Oglethorpe Power Corp.
141	City of Vero Beach.
142	Big Rivers Electric Corporation.

The interchange services which are affected by these revisions are: (1) Service Schedule (A) Emergency, (2) Service Schedule B—Short Term Firm, (3) Service Schedule D—Firm, (4) Service Schedule F—Assured Capacity and Energy, (5) Service Schedule G—Backup Service, (6) Service Schedule H—Reserve Service, (7) Service Schedule RE—Replacement Energy, and (8) Contract For Assured Capacity And Energy With Florida Power & Light Company.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 1995 and remain effective through April 30, 1996. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective June 15, 1995.

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 May 15, 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. 95–11111 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–350–000]

Columbia Gas Transmission Corporation, et al.; Notice of Application

May 1, 1995.

Take notice that on April 25, 1995, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and National Fuel Gas Supply Corporation (National Fuel), 10 LaFayette Square, Buffalo, New York 14203, filed in Docket No. CP95–350–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation and exchange service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicants propose to abandon the service which was authorized by the Commission in Docket No. CP77–465 and carried out under the terms of an agreement on file as Columbia's Rate Schedule X–96 and National Fuel's Rate Schedule X–16. It is stated that Columbia was authorized to transport gas for National Fuel in order for UGI Utilities Inc. (UGI), formerly UGI Corporation, to take advantage of a storage service furnished by National Fuel and National Gas Storage Corporation. It is stated that Columbia was authorized to deliver to National Fuel for UGI's account between 2 and 25 MMcf of gas per day for summer injection and between 3 and 35 MMcf of gas per day for winter withdrawal. It is explained that these deliveries were made at existing interconnections between Columbia and National Fuel. It is further explained that an additional point of interconnection was established in Cameron County, Pennsylvania, in order to make deliveries for injection into storage and withdrawal.

It is stated that in a letter dated July 12, 1993, Columbia notified National Fuel and UGI that it was terminating the transportation and exchange agreement effective May 10, 1994. Columbia explains that the services are no longer needed and that an alternative service is available to UGI under Columbia's Part 284 storage and transportation blanket certificate pursuant to its SST rate schedule. It is asserted that no gas volumes have been transported under

Rate Schedule X–96 since 1983, and there are no outstanding imbalances.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 22, 1995, 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 is 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 Columbia or National Fuel to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11110 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

Central Power and Light Company; Notice of Filing

[Docket No. ER95–932–000]

May 1, 1995.

Take notice that on April 21, 1995, Central Power and Light Company (CPL) submitted a Service Agreement, dated May 1, 1995, establishing Texas-New Mexico Power Company (TNP) as a customer under the terms of CPL's Coordination Sales Tariff CST–1 (CST–1 Tariff).

CPL requests an effective date of May 1, 1995, and, accordingly, seeks waiver of the Commission's notice requirements. Copies of this filing were served upon TNP and the Public Utility Commission of Texas.

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 May 15, 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. 95–11109 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–8–000]

Arkansas Western Gas Company; Notice of Informal Settlement Conference

May 1, 1995.

Take notice that an informal settlement conference in the above-captioned proceeding will be held on Tuesday, May 16, 1995 at 2:00 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Attendance will be limited to the parties and participants, as defined by 18 CFR 385.102(b) and (c). Persons wishing to become a party must move to intervene and receive intervenor status pursuant to § 385.214 of the Commission's regulations.

For additional information, please contact Mark E. Hegerle at (202) 208–0287.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11108 Field 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–237–019]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Change in FERC Gas Tariff

May 1, 1995.

Take notice that on April 27, 1995, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets:

Second Sub. Fifth Revised Sheet No. 4
First Sub. Seventh Revised Sheet No. 4
First Sub. Eighth Revised Sheet No. 4

Alabama-Tennessee proposes that these tariff sheets be made effective September 1, 1994, October 1, 1994 and March 1, 1995, respectively. According to Alabama-Tennessee, the purpose of this filing is to make certain corrections to the filing that it made in this Docket on April 4, 1995.

Alabama-Tennessee requests that the Commission grant such waivers as may be required to accept and approve its filing as submitted.

Alabama-Tennessee states that copies of its filing were served upon the Company's jurisdictional customers and interested public bodies as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before May 8, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11107 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–6–013]

Paiute Pipeline Company; Re-Notice of Refund Report [1]

May 1, 1995.

Take notice that on April 13, 1995, Paiute Pipeline Company (Paiute), submitted a refund report reflecting refunds of $4,978,057.41 received from various companies, pursuant to Commission orders issued on September 29, 1994 (70 FERC ¶ 61,038).

Paiute states that on March 6, 1995, and March 23, 1995, Paiute refunded amounts to its jurisdictional storage and

[1] This filing is being re-noticed because of an error in **Federal Register** publication.

transportation customers, inclusive of principal and interest.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before May 9, 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. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11129 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–320–000]

Tennessee Gas Pipeline Company; Notice of Intent to Prepare an Environmental Assessment for the Proposed Bayou D'Arbonne Crossing Project and Request for Comments on Environmental Issues

May 1, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the facilities proposed in the Bayou D'Arbonne Crossing Project.[1] This EA will be used by the Commission in its decision-making process to determine whether an environmental impact statement is necessary and whether to approve the project.

Summary of the Proposed Project

Tennessee Gas Pipeline Company (Tennessee) wants to replace about 3,700 feet of 16-inch and 24-inch-diameter pipeline with about 1,800 feet of 24-inch-diameter pipeline in Ouachita Parish, Louisiana. The replacement would be done by directionally drilling the Bayou D'Arbonne. Tennessee requests Commission authorization, in Docket No. CP95–320–000, to construct and operate the following facilities needed to continue service:

- Abandon in place 1,608 feet of three 16-inch-diameter pipelines beneath the Bayou D'Arbonne;
- Abandon by removal 2,088 feet of the remaining on-bank tie-in facilities including two 24-inch-diameter headers; and
- Construct 1,800 feet of 24-inch-diameter replacement pipeline by directionally drilling the Bayou D'Arbonne 100 feet south of the existing pipelines.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 7.2 acres of land. Following construction, about 0.6 acre of land would be maintained as permanent right-of-way. The remaining 6.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Public safety
- Land use
- Cultural resources
- Endangered and threatened species

We will also evaluate possible alternatives to the proposed project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issue

One issue that has arisen based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee concerns crossing the Bayou D'Arbonne which is in the National Wild and Scenic Rivers System. In the unlikely event that the directional drill fails, impact on the Bayou D'Arbonne could be significant.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426;
- Reference Docket No. CP95–320–000;
- Send a *copy* of your letter to: Mrs. Dawn Neumann, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before June 7, 1995.

If you wish to receive a copy of the EA, you should request one from Mrs. Neumann at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an ''intervenor''. Among other things, intervenors have

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[1] Tennessee Gas Pipeline Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Mrs. Dawn Neumann, EA Project Manager, at (202) 208–1046.

Lois D. Cashell,

Secretary.

[FR Doc. 95–11115 Filed 5–4–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5200–9]

Public Notice; Review of Lake Michigan Lakewide Management Plan

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This document provides opportunity for comment on the revised draft Lakewide Management Plan (LaMP) for Lake Michigan as required by the Great Lakes Critical Programs Act of 1990. The Lake Michigan LaMP will serve to satisfy the obligations of the United States Environmental Protection Agency (USEPA or Agency) under Section 118 (c) (4) of the Clean Water Act. This revised draft LaMP was developed by USEPA, in cooperation with the U.S. Army Corps of Engineers, U.S. Department of Agriculture, U.S. Fish and Wildlife Service, U.S. Geological Survey, the States of Illinois, Indiana, Michigan, and Wisconsin, and the Chippewa/Ottawa Treaty Fishery Management Authority. USEPA puts forward this draft LaMP for public comment on behalf of these agencies.

The draft Lake Michigan LaMP describes the pollutants impacting Lake Michigan on a lakewide and regional scale and informs the public of the variety of actions that Federal, State, Tribal, and local governments and private organizations are taking, will take, or could take to reduce the amount of these pollutants entering the waters of the Lake Michigan watershed. Due to its length and format, the draft Lake Michigan LaMP is summarized in this notice, rather than published in full. As described in this notice, USEPA is making copies of the entire revised draft Lake Michigan LaMP available to the public. USEPA also has produced, and is making available to the public, a Responsiveness Summary which details USEPA's responses to comments received on an earlier draft Lake Michigan LaMP, dated January 1, 1992. Comments on the January 1, 1992, draft LaMP were solicited in a **Federal Register** notice of availability published on August 11, 1992 (57 FR 41941), and during seven public meetings held throughout the Lake Michigan basin in the fall 1992. Because numerous comments were received on the draft LaMP, which led to substantial revisions of the document, the Agency is providing the public another opportunity to review and comment on the revised draft Lake Michigan LaMP. With this notice, USEPA is soliciting comments on all aspects of the revised draft LaMP. In particular, USEPA seeks comments regarding the proposed list of Critical Pollutants and Pollutants of Concern for Lake Michigan, and the actions available to Federal, State, and local agencies, as well as the public, to reduce the release of these pollutants from all sources and the presence of these substances in the waters of the Lake Michigan watershed. USEPA hopes to publish a final Stage 1 Lake Michigan LaMP in the **Federal Register** by January 1996.

DATES: USEPA will accept comment on the revised draft Lake Michigan LaMP for 60 days after the date of publication of this notice of availability. In addition, USEPA has considered materials submitted by the public prior to today's notice in the development of the revised draft LaMP. These materials contain comments on draft elements that have been superseded by today's proposal and USEPA will not consider them in the development of the LaMP. Further, USEPA cannot ensure consideration of comments submitted to other agencies or entities other than USEPA in the development of the LaMP. Accordingly, USEPA advises the public that for the purposes of exhaustion of administrative remedies, all comments must be submitted to USEPA based on today's notice.

ADDRESSES: All comments should be addressed to Jeanette Morris-Collins, Environmental Protection Assistant, U.S. EPA, Region 5 (WQ–16J), 77 West Jackson Boulevard, Chicago, Illinois, 60604 (telephone: 312–886–0152). To obtain a copy of the revised draft Lake Michigan LaMP or to provide oral or written comments, please contact Jeanette Morris-Collins, Environmental Protection Assistant, U.S. Environmental Protection Agency—Region 5 (WQ–16J), 77 West Jackson, Chicago, Illinois 60604, 312/886–0152. Copies of the revised draft Lake Michigan LaMP may also be obtained from the following offices:

Illinois Environmental Protection Agency, ATTN: Bob Schacht, 1701 S. First Avenue, Suite 600, Maywood, Illinois 60153, 708/338–7900

Indiana Department of Environmental Management, ATTN: Adriane Esparza, Gainer Bank Building, 504 N. Broadway, Suite 418, Gary, Indiana 46402, 219/881–6707

Michigan Department of Natural Resources, ATTN: Amy Shelton, P.O. Box 30028, Lansing, Michigan 48909, 517/335–1211

Water Resources Management, Wisconsin Department of Natural Resources, ATTN: Jo Mercurio, 101 S. Webster Street, P.O. Box 7921, Madison, Wisconsin 53707, 608/267–2452

Lake Michigan Federation, 59 E. Van Buren Street, Suite 2215, Chicago, Illinois 60605, 312/939–0838

Lake Michigan Federation, 1270 Main Street, Green Bay, Wisconsin 54302, 414/432–5253

Lake Michigan Federation, 647 W. Virginia, Milwaukee, Wisconsin 53204, 414/271–5059

Lake Michigan Federation, 425 Western Avenue, Suite 201, Muskegon, Michigan 49440, 616/722–5116

FOR FURTHER INFORMATION CONTACT: Gary Kohlhepp, Lake Michigan LaMP Coordinator, U.S. EPA, Region 5 (WQ–16J), 77 West Jackson Blvd., Chicago, Illinois, 60604 (telephone: 312–886–4680).

SUPPLEMENTARY INFORMATION:

I. Background

In Article VI, Annex 2 of the Great Lakes Water Quality Agreement (GLWQA), as amended by Protocol in 1987, the United States and Canadian Governments agreed to develop and implement Lakewide Management Plans (LaMPs) for each of the five Great Lakes. In the 1987 amendments to the Clean Water Act (CWA; Public Law 100–4, February 4, 1987), Congress directed USEPA to take the lead in the effort to meet the goals embodied in the GLWQA, with particular emphasis on

toxic pollutants, in cooperation with other Federal and State agencies and local authorities (Section 118 (a)(1)). For Lake Michigan, the Government of the United States has the sole responsibility for developing the LaMP.

Congress further emphasized the importance of the LaMP process for Lake Michigan in the Great Lakes Critical Programs Act of 1990 (GLCPA; Public Law 101–596, November 16, 1990) by establishing a specific schedule for Lake Michigan LaMP development. Section 101 of the GLCPA directs USEPA to:

- Publish in the **Federal Register** a proposed LaMP for Lake Michigan and solicit public comments by January 1, 1992;
- Submit a proposed LaMP for Lake Michigan to the International Joint Commission for review by January 1, 1993; and
- Publish in the **Federal Register** a final LaMP for Lake Michigan and begin implementation by January 1, 1994.

The LaMP for Lake Michigan represents a summary of the Agency's current knowledge regarding specific pollutants impacting the waters of Lake Michigan, the current sources and loadings of these pollutants into the Lake, and initial steps to reduce both loads and ambient concentrations of these pollutants.

The goals of the Lake Michigan LaMP are: (1) To reduce both the ambient concentrations and the mass loadings of toxic pollutants from all sources, in order to restore the 14 beneficial uses (Listed in the GLWQA) of Lake Michigan and protect and restore the physical, chemical, and biological integrity of Lake Michigan; (2) to prevent any further degradation of the Lake Michigan System from the release of toxic pollutants and to avoid the need for remedial actions in the future; (3) to be a mechanism of progress for the Lake Michigan System towards the Agreement's goal of virtually eliminating the discharge of persistent, bioaccumulative toxic pollutants throughout the Great Lakes System; and (4) to implement the requirements of the Clean Water Act and thereby achieve the goals and objectives of the Great Lakes Water Quality Agreement.

USEPA intends the Lake Michigan LaMP to serve as the basis for development and submission of Water Quality Management Plans developed in accordance with Sections 208 and 303(b) of the CWA, as implemented through the requirements of 40 CFR 130.6. These plans establish a process for continuous water quality planning which focuses on priority issues and geographic areas and on the development of water quality controls leading to implementation measures. Such plans draw on water quality assessments to identify priority point and nonpoint water quality problems, consider alternative solutions and recommend control measures. Annual state workplans are to be based on these priority areas identified in each State WQM plan. In this way, USEPA and the States will ensure reasonable progress in the overall improvement of Great Lakes water quality and attainment of beneficial uses.

II. Management Process

The development and implementation of a LaMP for Lake Michigan is an enormous undertaking in terms of the technical complexity of the environmental issues, the geographic area involved, and the extensive coordination needed at the Federal, State, Tribal and local levels and with the public. USEPA believes full participation by all interested parties is necessary to ensure reasonable progress in developing the LaMP.

The Lake Michigan LaMP is directed by the Lake Michigan Management Committee, a steering committee consisting of managers of Federal, State, and Tribal agencies. The Management Committee is responsible for: (1) Providing overall policy direction to the program, defining program priorities, and ensuring program implementation through application of all relevant programmatic and statutory authorities, and through voluntary and innovative programs; (2) convening technical work groups composed of Federal, State, and other representatives as necessary to develop recommendations for action; (3) reviewing and approving the LaMP or specific elements of it, technical workgroup products and recommendations; (4) ensuring public participation and review; and (5) securing resources for LaMP development and implementation.

A Technical Coordinating Committee (TCC), comprised of technical staff from participating agencies, reports to the Management Committee. The TCC meets quarterly to identify and discuss LaMP priorities and provide specific recommendations concerning LaMP development and implementation to the Management Committee.

Public participation in the development and implementation of the Lake Michigan LaMP is accomplished through three tiers of activity: (1) General public education through workshops, public presentations, and the distribution of fact sheets and other written materials; (2) public notices to provide the opportunity for broad public review of LaMP documents and progress on implementation; and (3) the Lake Michigan Forum. The Lake Michigan Forum consists of members of the public from environmental groups, industry, non-profit organizations, municipalities, and other interested citizens, with membership and meetings open to any interested parties. The Forum meets quarterly to discuss LaMP issues, provides comment to the Management Committee on specific issues, and reviews and comments on LaMP documents. Participation in technical work groups is open to the public. The Forum does not substitute for the activities described in tiers 1 and 2. Forum members are encouraged to inform their constituencies of activities carried out under the LaMP program and to provide the Management Committee with their constituencies' views and concerns on LaMP activities.

III. LaMP Process

The Lake Michigan LaMP embodies a process for implementing a multi-media approach to environmental protection. The process consists of the following steps:

(1) Monitoring the environment and reviewing available data to identify any existing beneficial use impairments or other ecological impairments, as well as any potential threats to Lake Michigan and its watershed;

(2) Identifying the pollutants associated with impairments or threats;

(3) Identifying sources of these pollutants;

(4) Measuring or estimating the quantity of pollutants being released by those sources and the amount reaching the waters of the Lake Michigan System (i.e., the ''loading'' of the pollutants);

(5) Establishing load reductions that will allow the restoration and protection of the ecological health of the Lake Michigan System;

(6) Developing and implementing specific strategies to reduce the levels of pollutant loadings and/or ambient levels in the waters of the Lake Michigan System;

(7) Monitoring reductions from all pollutant sources;

(8) Evaluating ecosystem response, through monitoring of ecosystem indicators, to measure progress towards restoration of beneficial uses and ecosystem integrity, and to detect emerging problems; and,

(9) Revising the LaMP to reflect the results of load reduction actions, incorporate additional data on the status of beneficial uses and ecosystem integrity, and identify the next series of necessary actions.

USEPA intends the LaMP to serve as a guide for environmental managers in the Lake Michigan Basin by defining a network of dynamic, interrelated actions. In subsequent iterations of the Lake Michigan LaMP, USEPA anticipates more information will become available, and additional load reduction activities identified for implementation by the participating agencies. USEPA and the participating agencies will assess the effectiveness of ongoing efforts, and establish new priorities as appropriate.

USEPA and the participating agencies believe the LaMP process will improve environmental protection efforts by: (1) Coordinating on a lakewide basis the prevention, abatement and remediation programs undertaken in support of the Great Lakes program; (2) coordinating Federal, State, local, and tribal activities to avoid duplication of effort, ensure that ongoing activities are complementary, and identify opportunities to enhance ongoing efforts; (3) communicating information among all levels of government and the public in order to both fully inform the public of ongoing and proposed activities and provide a forum for public input and comment; (4) providing a specific mechanism for linking pollution control activities to environmental results; and (5) identifying and evaluating gaps in existing programs, authorities, and voluntary activities which represent impediments to restoring and protecting Lake Michigan, and making recommendations on how to improve environmental protection efforts.

Because Annex 2 of the GLWQA specifically states that the United States and Canadian governments are to develop ''Lakewide Management Plans for Critical Pollutants'', USEPA believes that the current focus on pollutants fulfills the requirements of the GLWQA. However, USEPA recognizes that toxic pollutants in Lake Michigan are not the only causes of impairments of beneficial uses. For example, habitat losses and shifts in species composition may be equally important factors contributing to degraded conditions. Therefore, future iterations of the LaMP will be expanded to look at the beneficial use impairments caused by all stressors, including toxics, nutrients, habitat loss/degradation, exotic species, and resource exploitation. In this manner the Agency believes the LaMP process can facilitate appropriate management attention on other stressors in addition to toxic pollutants.

IV. LaMP Integration With Other Great Lakes Initiatives

There are a number of other programs the United States is currently implementing to prevent pollutants from being introduced, reduce pollutant loadings currently being discharged, and remediate past pollutant discharges to the waters of the Great Lakes System. Together, the Agency believes these represent a comprehensive approach to restoring and protecting the Great Lakes System.

The Great Lakes 5-Year Strategy (Strategy) commits the Federal, Tribal, and State agencies responsible for environmental protection in the Great Lakes to achieving specific environmental goals. The Strategy has three primary components: reducing and virtually eliminating toxic pollutants; protecting and restoring habitat; and protecting the health of all Great Lakes species. In the area of toxics reduction, the Strategy calls for ''* * * [reducing] the level of toxic substances in the Great Lakes system with an emphasis on persistent toxic substances, so that all organisms are adequately protected and toxic substances are virtually eliminated from the Great Lakes ecosystem.'' The Lake Michigan LaMP is one piece of the 5-Year Strategy's toxics reduction component.

Annex 2 of the GLWQA also directs the State and Provincial Governments to develop and implement Remedial Action Plans (RAPs) to restore and protect beneficial uses in specific areas designated as Areas of Concern (AOCs). By definition, the RAPs are designed to address local problems within the AOC, problems which may or may not be reflected on a lakewide basis. There are ten AOCs located in the Lake Michigan watershed. Through the LaMP, USEPA intends to document sources of pollutants and estimate loads of pollutants to Lake Michigan from the AOCs, and determine whether or not these areas contribute significantly to lakewide impairments. Pollution prevention, abatement and remediation activities that are carried out through the RAP process will reduce toxic chemical inputs to Lake Michigan. USEPA does not intend for the LaMP to duplicate or interfere with RAP efforts, but rather to serve as an umbrella under which RAP activities can be placed into a lakewide context. Any toxic chemical contributing to use impairments in an AOC is listed as a Lake Michigan LaMP Pollutant. This approach maximizes coordination and minimizes duplication of effort between LaMPs and RAPs. USEPA believes that including nearshore and coastal areas within the definition of open lake waters is appropriate as use impairments most representative of the toxic pollution problem in Lake Michigan (e.g., bioaccumulation in the aquatic food chain and resulting wildlife deformities at the top of the food chain) occur most frequently in nearshore areas where biological activity is highest.

A major initiative across the Great Lakes Basin was the development of the final Water Quality Guidance for the Great Lakes System (Guidance), signed by the Administrator on March 13, 1995. The final Guidance represents a milestone in the 30 years of effort on the part of the Great Lakes stakeholders to define and apply innovative, comprehensive environmental programs in protecting and restoring the Great Lakes. In particular, publication of the final Guidance culminates six years of intensive, cooperative effort that included participation by the eight Great Lakes States, the environmental community, academia, industry, municipalities and USEPA Regional and National offices.

The Guidance consists of water quality criteria for 29 pollutants to protect aquatic life, wildlife, and human health, and detailed methodologies to develop criteria for additional pollutants; implementation procedures to develop more consistent, enforceable water quality-based effluent limits in discharge permits, as well as total maximum daily loads of pollutants that can be allowed to reach the Lakes and their tributaries from all sources; and antidegradation policies and procedures. The final Guidance will help establish consistent, enforceable, long-term protection with respect to all types of pollutants, but will place short-term emphasis on the types of long-lasting pollutants that accumulate in the food web and pose a threat to the Great Lakes System. In addition, the Guidance provisions help establish consistent goals or minimum requirements for Remedial Action Plans and Lakewide Management Plans that are critical to the success of international multi-media efforts to protect and restore the Great Lakes ecosystem. The final Guidance also establishes goals and minimum requirements that will further the next phase of Great Lakes programs, including the Great Lakes Toxic Reduction Effort's integrated, multi-media ecosystem approach.

Great Lakes States and Tribes will use the water quality criteria, methodologies, policies, and procedures in the Guidance to establish consistent, enforceable, long-term protection for fish and shellfish in the Great Lakes and their tributaries, as well as for the

people and wildlife who consume them. Under the Clean Water Act, the States of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin must adopt provisions into their water quality standards and NPDES permit programs within two years following publication of the final Guidance that are consistent with the Guidance, or USEPA will promulgate the provisions for them.

USEPA, working in conjunction with the Great Lakes States, are developing an integrated, basin-wide framework under the Great Lakes 5-Year Strategy to achieve additional reductions in loadings of toxic contaminants from nonpoint sources to the Great Lakes. The activities under this framework are collectively referred to as the ''Great Lakes Toxics Reduction Effort''. The following principles guide the process:

1. Focus on bioaccumulative chemicals of concern (BCCs) as proposed in the Great Lakes Water Quality Guidance;
2. Sufficient action where scientific knowledge currently exists to prevent, control, or eliminate certain BCCs;
3. To strategically apply appropriate elements of existing legislative, regulatory, and nonregulatory authorities, and address relevant programmatic gaps to reduce toxic pollutant loads to the Great Lakes;
4. Perform additional scientific research to identify the sources and relative contributions of toxics from all sources, to better target future reduction efforts;
5. Undertake these efforts in an open, collaborative process with Federal, State, Tribal, and local partners and provide opportunity for full and meaningful public participation.
6. Do as much of the work as possible through existing committees and structures, rather than creating new ones.

In keeping with these guidelines, there are three major activities being pursued: (a) The Pathway/Source analysis, focusing on the primary sources and mechanisms or ''pathways'' through which BCCs enter the Great Lakes System; (b) the Virtual Elimination Project, focusing on the sources, uses, and releases of BCCs, including PCBs and mercury, in the Great Lakes basin and analyzing ways to achieve further reductions; and (c) the Lake Michigan Enhanced Monitoring Program, designed to guide future toxic reduction efforts. The Pathway/Source analysis focuses on: air deposition; contaminated sediments; transport, handling, and short-term storage; waste sites; and stormwater and combined sewer overflows. Ultimately, procedures will be established for the attainment of the water quality criteria and values proposed in the Guidance through the application of appropriate elements of environmental authorities to nonpoint sources throughout the Great Lakes basin.

V. Environmental Objectives and Indicators

The development of environmental objectives and indicators are essential for the Lake Michigan LaMP to demonstrate success. In Annex 1 of the GLWQA, the U.S. government, in consultation with State governments, agreed to develop environmental objectives for the waters of the Great Lakes System, as the state of the knowledge permits. Ecosystem objectives and indicators for Lake Michigan, when finalized and adopted into the Lake Michigan LaMP, will serve to further the broader goals of the Agency's Great Lakes program.

USEPA views ecosystem objectives as an integral component of LaMPs consistent with the general principles of Annex 2 of the GLWQA that LaMPs embody a systematic and comprehensive ecosystem approach to restoring and protecting beneficial uses. Proposed Lake Michigan ecosystem objectives for aquatic communities, wildlife, human health, habitat, and stewardship were formulated by representatives of Federal and State agencies and members of the public at a December 1991 workshop held in Chicago, Illinois. Because the Agency intends to finalize and adopt environmental objectives based on comments received, USEPA requests public comment on the proposed objectives described in Chapter 1 of the revised draft LaMP, including the scope and appropriateness of these proposed objectives.

In addition, USEPA and the other participating agencies currently are developing environmental indicators for Lake Michigan. These indicators, when finalized, will define specific measurable endpoints, including both chemical and biological components, relating to the final Lake Michigan ecosystem objectives. In this manner, USEPA will be able to measure progress towards achieving the ecosystem objectives for Lake Michigan. Interested members of the public also will have opportunities to participate in the development of, as well as review and comment on, environmental indicators prior to final adoption.

The Great Lakes Water Quality Guidance establishes water quality criteria and goals to protect aquatic life, wildlife, and human health in the Great Lakes Basin. The water quality criteria and values in the Guidance apply to all the ambient waters of the Great Lakes System, regardless of the source of pollutants to those waters. In this manner, the water quality criteria and values provide the basis for integrating actions carried out under the range of environmental programs available to Federal, State, and Tribal regulators to restore and protect the Great Lakes. USEPA intends to use the water quality criteria and values as indicators of the health of the Lake Michigan system. USEPA requests comments on this approach.

VI. Lake Michigan LaMP Pollutants

A Critical Pollutant Work Group, consisting of technical staff from USEPA, U.S. Fish and Wildlife Service, U.S. Geological Survey, and the four Lake Michigan States, has developed a process for listing and delisting substances as LaMP Pollutants and identified those chemicals that, based on existing information, are impacting Lake Michigan and its watershed. The Critical Pollutant Work Group recommends that LaMP Pollutants be categorized into three levels based on degree of association with use impairments and spatial distribution or frequency of occurrence. Subsequent LaMP management activities also would be tiered based on pollutant classification.

The Great Lakes Water Quality Agreement defines Critical Pollutants as substances that exist at levels that impair beneficial uses due to their presence in open lake waters, their ability to cause or contribute to a failure to meet Agreement objectives, or their ability to bioaccumulate. For the purposes of the Lake Michigan LaMP, USEPA proposes ''Critical Pollutants'' (Level 1) as those chemicals that violate the most stringent Federal/State water quality standard or criteria, exceed an FDA action level in Lake Michigan fish, or are associated with lakewide use impairments. Based on the available information regarding the pollution of Lake Michigan and the effects or potential effects of the pollutants on aquatic life, wildlife, and humans, USEPA is proposing the following pollutants as Critical Pollutants (Level I) for Lake Michigan: total polychlorinated biphenyls (PCBs); dieldrin; chlordane; DDT and degradation products (DDD and DDE isomers); polychlorinated dibenzo-para-dioxins (dioxins); polychlorinated dibenzofurans (furans); and mercury. These substances are the primary focus of the LaMP program.

USEPA proposes ''Pollutants of Concern'' (Level 2) as those pollutants

associated with local or regional use impairments (including AOCs) or for which there is evidence that loadings to, or ambient concentrations in, the Lake Michigan watershed are increasing. Management actions for these substances will emphasize pollution prevention efforts, load reduction opportunities, and additional information collection. Pollutants of Concern include any chemicals associated with a use impairment in an Area of Concern, if it is not already listed as a Critical Pollutant. In these instances, the LaMP process will not duplicate or interfere with RAP efforts. USEPA believes that listing pollutants associated with impairments in only one or a few AOCs as LaMP Pollutants of Concern recognizes that these substances are present in the Lake Michigan watershed, have been associated with an impairment, and may be transported into the Lake if control measures are not taken. When the RAP process determines that a chemical no longer contributes to use impairments in any Lake Michigan AOC, it will be removed from the LaMP Pollutant list.

USEPA believes that listing chemicals with increasing loads and/or concentrations, and those that cause impairments in AOCs, as LaMP Pollutants of Concern is consistent with the Agency's intent to prevent future impairments of beneficial uses and is consistent with the Agency's pollution prevention policy. This approach will allow the participating agencies to prevent or reduce pollutant loads prior to their causing a lakewide problem. Based on available data, USEPA is proposing the following Pollutants of Concern for Lake Michigan: Hexachlorobenzene, toxaphene, polycyclic aromatic hydrocarbons (PAHs), lead, copper, zinc, arsenic, cadmium, chromium, and cyanide.

In addition to addressing persistent toxic pollutants which contribute to ecological impairments, USEPA proposes that the LaMP process identify those pollutants which have not yet been associated with an impairment, but whose characteristics suggest the ability to impact the Lake Michigan System. USEPA believes the identification and reduction of pollutant loadings to Lake Michigan waters before they reach levels sufficient to cause beneficial use impairments is consistent with the Agency's intent to prevent future impairments of beneficial uses and is consistent with the Agency's pollution prevention policy. USEPA proposes ''Emerging Pollutants'' (Level 3) as those toxic substances that, while not presently known to contribute to impairments or to show increasing loadings or concentrations, have characteristics that indicate a potential to impact the physical or biological integrity of Lake Michigan. These characteristics include presence in the watershed, ability to bioaccumulate, persistence, and toxicity. A brief summary of information concerning these characteristics will be developed for any pollutant listed as an Emerging Pollutant, as well as a description of information required to determine whether it should be moved up on, or removed from, the LaMP Pollutant list. USEPA believes that listing pollutants under ''Emerging Pollutants'' is another mechanism to help prevent pollutants from causing lakewide problems. In terms of management action for Emerging Pollutants, the Work Group recommends data collection, research, and monitoring efforts. Emerging Pollutants will not be subject to pollution prevention, reduction, or remediation efforts through the LaMP process. Instead, the LaMP recommends Emerging Pollutants as priorities for data gathering and research activities. Based on available information, USEPA proposes the following substances as ''Emerging Pollutants'': atrazine, selenium, and 5 PCB substitute compounds (isopropylbiphenyl, Santosol 100 and 150, Suresol 290, Diisopropylnaphthalene).

USEPA intends information regarding Emerging Pollutants to be compiled and summarized, including data on chemical properties (persistence, bioaccumulation, and toxicity), ambient concentrations, loadings, and sources. Where information is lacking for specific pollutants, these data gaps will be identified and recommendations for future needs developed through the LaMP process. USEPA intends to develop one page ''fact sheets'' that briefly summarize pertinent information for Emerging Pollutants. These fact sheets will be updated as more data become available. In some cases, information collection may be a long-term process.

The Agencies will review and update the LaMP Pollutant list for Lake Michigan as necessary based on data generation and new information. This process will include:

1. Convening the Critical Pollutant Work Group to review available information regarding:

(a) Contaminants currently listed as LaMP Pollutants for which data indicate that either removal from the list or dropping to a lower category is warranted. Reasons could include load reductions, elimination of association with use impairments, and/or compliance with all standards, criteria, or action levels;

(b) Pollutants listed as LaMP Pollutants or not previously listed, for which current information suggests moving up on or adding to the list. Such evidence would include a lakewide (Critical Pollutant) or local (Pollutant of Concern) association with an ecological impairment, a violation of a numerical or narrative standard (Critical Pollutant), increasing loads/ambient concentrations (Pollutant of Concern), or characteristics indicating a potential to adversely impact Lake Michigan (Emerging Pollutant).

2. Critical Pollutant Work Group recommendations, based on these reviews, to the Management Committee concerning chemicals for listing/delisting or changing categories. These recommendations and supporting documentation also will be presented to the Lake Michigan Forum for review and comment.

3. Management Committee review of Work Group recommendations and Forum comments regarding alterations of the pollutant list and issuance of a final recommendation. If the Management Committee recommends changes to the list, these will become final pending their publication in the **Federal Register**, a 45-day public comment period, and publication of the revised list.

USEPA requests comments on its proposal to designate the pollutants listed above as Critical Pollutants, Pollutants of Concern, and Emerging Pollutants for Lake Michigan, the approaches for designating these pollutants, and the proposed process for revising the lists. USEPA requests proposals for pollutants other than those listed above to be added to any of the three levels, as well as the scientific basis for such additions. USEPA further requests any information concerning the concentration of a substance in the water or sediments of Lake Michigan, or in the tissues of the aquatic life, wildlife, or humans that are dependent on Lake Michigan for food or water, which suggests that a substance should be considered for listing in Lake Michigan. In addition, USEPA requests any additional information on sources and loadings of these and any other substances that may contribute to, or have the potential to contribute to, impairments of beneficial uses in the Lake Michigan ecosystem.

VII. Source Identification and Load Quantification

The draft Lake Michigan LaMP identifies potential sources of the proposed Levels 1, 2, and 3 Pollutants,

and estimates pollutant loadings from these sources where such estimates exist. Sources of LaMP Pollutants to Lake Michigan discussed in the LaMP include NPDES facilities (industrial and municipal), urban and agricultural runoff, atmospheric deposition, tributaries, hazardous waste facilities and sites (RCRA, CERCLA), groundwater, stormwater, and contaminated sediments. Load estimates for toxic pollutants from most of these sources to Lake Michigan are scarce or nonexistent. USEPA intends to better identify sources of LaMP Pollutants and generate more accurate load estimates from various sources in future iterations of the Lake Michigan LaMP in order to prioritize prevention, reduction, and remediation activities.

One major activity being developed through the Lake Michigan LaMP is the Lake Michigan Enhanced Monitoring Program, an integrated tributary and air deposition study for LaMP Pollutants. Full sampling of 11 tributaries and nine land-based atmospheric deposition stations (as well as some overwater stations) began in April 1994 and will continue through October 1995. This study will allow USEPA and the participating Agencies to identify which tributaries contribute the greatest loads of LaMP Pollutants to Lake Michigan, as well as to determine the relative loading contributions of tributaries and air deposition.

Other source identification and load quantification actions have been initiated or are being planned by USEPA, the States, and local authorities. These include:

1. Development of a Lake Michigan mass balance model, which will allow water quality managers to predict the environmental benefits of specific load reduction scenarios for toxic pollutants, and the time required to realize those benefits;

2. Estimate of LaMP Pollutant loadings to Lake Michigan from tributary and harbor contaminated sediments;

3. Lake Michigan Environmental Monitoring and Assessment Program;

4. Estimate of LaMP Pollutant loadings to Lake Michigan from major NPDES facilities using available State data;

5. Expansion of Toxic Release Inventory (TRI) database to include additional LaMP Pollutants to better estimate releases into the environment;

6. Evaluation of the potential for RCRA facilities to release LaMP Pollutants into Lake Michigan Basin surface and ground waters; and

8. Air emissions inventories of sources of air toxics in the Great Lakes Basin.

Finally, the Lake Michigan LaMP identifies other source identification activities that the participating agencies could implement either in the short-term or the long-term. Some of these proposed activities include more detailed evaluations of urban runoff and stormwater for LaMP Pollutants, as well as multi-media facility audits and comprehensive PCB inventories. USEPA requests public comment on the scope, adequacy, and timing of these ongoing and proposed actions described in the Lake Michigan LaMP. In particular, USEPA requests that persons with knowledge of any sources or ongoing releases of LaMP Pollutants to waters within the Lake Michigan basin provide this information during the public comment period.

VIII. Management Actions

In addition to the data collection and assessment activities described in the preceding section, USEPA and the participating agencies have initiated several pollution prevention, reduction, and remediation activities for LaMP Pollutants. These include:

1. Agricultural clean sweeps for banned, cancelled, and unused pesticides in Indiana, Michigan, and Wisconsin;

2. Urban clean sweep in northwest Indiana;

3. Sediment assessment and remediation projects at Lincoln Park Gun Club (IL), Trail Creek (IN), and Manistee Lake (MI);

4. Sediment assessment and remediation activities in Lake Michigan Areas of Concern;

5. Pollution prevention outreach and multi-media technical assistance projects in Milwaukee, Chicago, western Michigan, and northwest Indiana;

6. Development of Maximum Achievable Control Technology (MACT) Standards for significant source categories of air toxics;

7. Great Waters Report to Congress describing impacts of toxics from air sources on the Great Lakes, and recommendations for reducing air emissions of these toxics; and

8. 25% reductions in releases of LaMP Pollutants to Lake Michigan waters from 10 RCRA facilities with the greatest potential for LaMP Pollutant releases.

The Lake Michigan LaMP also identifies several short-term and long-term activities that would prevent or reduce loadings of LaMP Pollutants to the waters of the Lake Michigan System. The Technical Coordinating Committee (TCC) intends to focus on high-priority items and set schedules, identify responsible parties, and develop the specific processes to ensure that these recommendations are implemented. Implementation will occur through base programs to the extent possible. Where this is not feasible, other approaches and relevant authorities will be identified. Each recommendation will identify the lead agency, the timeframe for completing the work, and the deliverables from the activity. Based on recommendations, workplans will be developed spelling out specific activities to be implemented during each year.

USEPA requests public comment on the scope, adequacy, and timing of these ongoing and proposed prevention, reduction, and remediation actions described in the Lake Michigan LaMP. USEPA specifically request public comments on the scope and adequacy of the recommendations for action identified in the opening pages of Chapter 5, as well as on the proposed process for translating the recommendations into specific workplans.

IX. Comments on January 1, 1992, Draft Lake Michigan LaMP

A notice of availability was published in the **Federal Register** on August 11, 1992, for an earlier draft Lake Michigan LaMP, dated January 1, 1992. Written comments from over 70 agencies, interest groups, companies, and citizens were received by USEPA. In addition, members of the public provided oral comments at seven public meetings around Lake Michigan. USEPA has prepared a Responsiveness Summary which is available to the public upon request.

Several commentors stated that the LaMP should prioritize Lake Michigan's environmental problems according to ecological health threats and prioritize remedial and reduction measures. The top priorities should be identified based on consensus of the participating Agencies as well as an explanation for these choices, as opposed to the current Action Agenda which appears to lack justification or establish clear priorities.

USEPA believes the prioritization of pollution prevention, reduction, and remediation activities is an important step in the LaMP process. The current Lake Michigan LaMP is an assessment of impairments, associated pollutants, and pollutant sources. Based on the information summarized in the LaMP, the participating Agencies are beginning discussions to identify priorities and provide recommendations on how to focus efforts to reduce levels of LaMP Pollutants and restore and protect

beneficial uses. USEPA intends to revisit priorities and recommendations annually as new information becomes available and environmental conditions change, and the Agencies will evaluate program successes and failures.

Many commentors stated that the LaMP Pollutant list is too small and should be expanded. Several believed the Pollutants of Concern (Level 2), such as PAHs, hexachlorobenzene, and furans, should be moved up to Critical Pollutants (Level 1). Others believed that many substances not listed as LaMP Pollutants should be included on the basis of known toxicity.

On the other hand, many commentors believed that the proposed list of Critical Pollutants is sufficiently comprehensive and no additional pollutants should be added until an effective management strategy is developed for the existing list. The pollutants in levels 1–4 include all those for which current science supports or infers potential lakewide impacts. Further efforts to add substances to the Critical pollutant list are likely to sidetrack available resources which would be better used to manage pollutants already identified.

USEPA surveyed available information and literature to identify those substances that are known to contribute, or have the potential to contribute, to beneficial use impairments in the Lake Michigan watershed. USEPA recognizes there are other pollutants which are toxic, bioaccumulative, and persistent, and have the potential to impair beneficial uses. However, USEPA believes that the best course of action is to focus efforts and limited resources on reducing levels of those pollutants known to be having the greatest impacts on the Lake Michigan system.

Many commentors stated that the outcome of USEPA's tiered approach in the LaMP would result in the following outcome: toxic substances not identified in level 1 or 2 would be allowed to accumulate in Lake Michigan. Not until toxics reached such concentrations that they significantly impaired beneficial uses would there be inclination to shift them into category 1 or 2, and managed for load reduction. Known toxics that have not yet reached dangerous concentrations in Lake Michigan should be prevented from entering Lake Michigan in the first place. That is, the LaMP should be proactive and prevent problems rather than being strictly reactive and cleaning up already existing problems.

USEPA believes the LaMP process provides a context for using new and existing monitoring and research data to identify pollutants, beyond the LaMP Pollutants, that may impair, or have the potential to impair, beneficial uses. The proposed LaMP does contain proposals for detecting these substances. For example, USEPA and the Michigan Department of Natural Resources piloted a new method for analyzing fish tissues for a wide range of acid-soluble bioaccumulative pollutants. This project enabled the participating agencies to identify pollutants accumulating in fish tissues. In addition, the pollutant listing system was revised to address emerging pollutants that, while not yet known to be impairing beneficial uses, have characteristics (presence, toxicity, persistence, bioaccumulative) indicating a potential to impact the Lake Michigan system.

Several commentors believed the LaMP should identify Lake Michigan-specific, quantitative chemical and biological indicators to track progress towards restoring the Lake's health. Further, the LaMP should describe these indicators or provide a process and schedule to develop them.

The participating Agencies recognize this issue as a priority and an important component of the LaMP process. A workgroup has been established to identify and select indicators. These quantitative measures will be included in subsequent LaMP updates and revisions.

Many citizens, particularly representatives of the sport and commercial fishing industries, were concerned with the objective on aquatic communities, specifically with the emphasis on self-sustaining communities of native species. This goal is viewed as a statement against the stocking of non-native salmonid species such as coho and chinook salmon and brown and steelhead trout, and that this objective should be modified or deleted.

The current draft LaMP focuses on reducing levels of toxic pollutants impacting Lake Michigan and its watershed. As such, actions taken through the LaMP process will benefit all species in Lake Michigan. The LaMP is not a fishery management plan, and therefore the objective for aquatic communities has been modified in the proposed LaMP.

Several commentors stated that the draft Lake Michigan LaMP is too narrow in scope. While toxic pollutants are a serious problem in Lake Michigan, other issues, such as habitat quantity and quality, exotic species, and overexploitation, are equally important and must be considered for the LaMP to be considered a true lakewide, ecosystem plan for Lake Michigan.

While the current focus of the Lake Michigan LaMP is on toxic pollutants, the participating Agencies recognize that issues associated with habitat quality and quantity, particularly as they relate to endangered or threatened species, are significant factors in addressing the overall ecological health of the Great Lakes system. As the LaMP process develops, the participating Agencies will identify opportunities for addressing these issues in conjunction with, or parallel to, toxics load reduction activities. In this manner, the Lake Michigan LaMP will further the broader goal of the GLWQA of identifying beneficial use impairments, and restoring and protecting the Lake Michigan basin.

Many commentors believed the Action Agenda is too heavily weighted towards load reduction activities from point sources, and that not enough attention is given to the control of nonpoint sources. The LaMP identifies opportunities for achieving load reductions from all sources, including both point and nonpoint sources. A number of ongoing and priority activities relate to reducing loads from nonpoint sources. The participating agencies recognize that all sources must be addressed to accomplish the goals of the LaMP process.

Because there is evidence that the toxic pollutants identified in the Lake Michigan LaMP are impacting the physical and biological health of Lake Michigan, USEPA believes releases of these pollutants from all sources must be reduced. While contributions of pollutants from air deposition, contaminated sediments, or other nonpoint sources which may be greater than those from point sources, USEPA believes this should not preclude load reduction actions from being implemented for point sources where possible. However, USEPA agrees that for the LaMP to be successful, all sources of pollutants must be addressed.

Several commentors stated that the initial LaMP should address the requirement from the GLWQA for the ''virtual elimination'' of toxic substances. On the other hand, many commentors stated that virtual elimination of some pollutants, if defined as zero discharge, is not possible without major societal impacts, and that there are levels at which pollutants may be present in the environment without causing adverse effects.

USEPA believes the goal of the Lake Michigan LaMP, as defined in the GLWQA, is to restore and protect the beneficial uses in the Lake Michigan watershed. LaMPs are to be steps toward

the goal of virtual elimination. Therefore, the Lake Michigan LaMP does not require virtual elimination of pollutants, unless it is determined that virtual elimination of a specific substance is necessary to restore and protect a beneficial use. The LaMP process will take steps to reduce loads of LaMP Pollutants, thereby ensuring reasonable progress in attaining the goals of the Agreement.

Several commentors stated that many of the references cited in the draft Lake Michigan LaMP need to be updated, references to unpublished studies are not appropriate in this document, and that more complete data should be incorporated into the LaMP.

USEPA has revised the proposed LaMP to include more recent data and a greater amount of data in general. USEPA concurs that unpublished studies should not be used to draw conclusions, and that only information pertinent to Lake Michigan, or at least to the Great Lakes, should be presented in the Lake Michigan LaMP.

X. Future LaMP Revisions

The proposed Lake Michigan LaMP will be revised following the public comment period to incorporate the comments received. The next iteration of the Lake Michigan LaMP will again be published in the **Federal Register**, to be followed by periodic revisions of the LaMP. These updates, on an ongoing basis, will ensure that the most recent data are incorporated into the document, that pollutant lists, sources, and loads are reviewed and updated by participating Agencies, and that new, emerging issues are identified and addressed. USEPA will continue to solicit public input and comment on LaMP activities and products during these future updates.

Dated: April 20, 1995.

Valdas V. Adamkus,

Regional Administrator, Region 5.

[FR Doc. 95–11146 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

[ER–FRL–4722–7]

Environmental Impact Statement and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 27, 1995 through March 31, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Request for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (72 FR 19047).

Draft EISs

ERP No. D–AFS–K65168–CA Rating EC2, San Bernardino National Forest, Realignment and Reconstruction, Falls Road, Implementation, San Bernardino County, CA.

Summary: EPA expressed environmental concerns on two water quality issues. EPA requested that the final EIS should clarify whether any aspect of the project will require a permit under Clean Air Act Section 404; and should carefully explore all feasible water quality mitigation for project construction due to existing erosion problems in the area and its steep terrain.

ERP No. D–DOE–E22000–PC Rating EC2, Savannah River Site Waste Management Facilities, Implementation, Aiken, Allendale and Barnwell Counties, SC.

Summary: EPA expressed environmental concerns for potential impacts to sensitive ecological and cultural resources under the maximum waste volume forecast. EPA found the Extensive Treatment Configuration to be the environmentally preferable alternative for long-term benefits.

ERP No. D–SFW–K99024–NV Rating EC2, Desert Tortoises (Gopherus Agassizii) Habitat, Issuance of Permit to Allow Incidental Take, Federal Land and Non-Federal Land, Clark County, NV.

Summary: EPA expressed environmental concerns. EPA applauded the regional effort represented by the CCDCP and the long-term incidental take permit. EPA proposed that the FEIS include additional information on existing conditions and potential impacts to air and water quality. EPA also recommended describing contingency plans in the FEIS in the event that development projections are exceeded and/or mitigation and conservation measures and unsuccessful.

Final EISs

ERP No. F–AFS–G61033–NM, Sipapu Ski Area Expansion, Master Development Plan Approval and Special Use Permit, Carson National Forest, Camino Real Ranger District, Taos County, NM.

Summary: EPA expressed lack of objections to the proposed action. EPA's concerns have been adequately addressed in the final EIS.

ERP No. F–AFS–L81011–AK, Helicopter Glacier Landing Tours, Implementation, Issuance of Special-Use-Permits, Tongass National Forest, Chatham Area, Juneau Ranger District, Alaska.

Summary: EPA had no objection to the preferred alternative as described in the EIS. Review of the final EIS has been completed and the project found to be satisfactory.

ERP No. F–BLM–J65203–MT, Big Dry Land and Resource Management Plan, Implementation, Miles City District, several counties, MT.

Summary: EPA continued to express environmental concerns regarding environmental effects, including cumulative effects, and lack of meaningful, detailed monitoring plans, particularly addressing fisheries, non-point pollution sources and water quality monitoring. EPA believed that water quality impacts of land management activities need to be monitored, assessed, and evaluated on a continuing basis to detect and measure impacts, so that the necessary adjustments in activities to prevent and minimize adverse impacts can be made.

ERP No. F–FHW–K40207–CA, CA–41 Route Adoption of Alignment Project, between El Paso Avenue and CA–145, Funding, Right-of-Way Acquisition and COE Section 404 Permit, Fresno and Madera Counties, CA.

Summary: EPA provided comments regarding EPA's role in the mitigation plan and implementation schedule for wetland impacts under Clean Water Act Section 404 as well as the infiltration and detention basins used to hold stormwater runoff. Both issues will be discussed in greater detail in the project's Tier II environmental documentation for facility construction.

ERP No. F–FHW–L50004–WA, Stillaguamish River Bridges WA–9/132 (Haller) and WA–530/120 (Lincoln) Bridge Replacement Project, Improvements, Funding, COE Section 404 Permit and Right-of-Way Acquisition, City of Arlington, Snohomish County, WA.

Summary: EPA had no objection to the preferred alternative as described in the EIS. Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–NPS–C80023–NY, Hamilton Grange National Memorial, General Management Plan, Implementation, New York County, NY.

Summary: EPA expressed lack of objections to implementing the project as proposed.

ERP No. F–USN–K11024–CA, U.S. Navy Lease of Fleet and Industrial Supply Center, (Naval Supply Center)

Property of the Port of Oakland for Development of Intermodal Rail Facilities and Maritime Cargo-Related Tenant Uses, Alameda County, CA.

Summary: EPA expressed environmental concerns with the Navy undocumented cumulative effects placed upon nearby communities. However, the Navy addressed EPA's concerns in response to comments.

ERP No. F–VAD–K11056–HI, Veterans Affairs Medical and Regional Office Center Relocation to Tripler Army Medical Center, Construction and Renovation, Approval and NPDES Permit, Oahu, HI.

Summary: EPA continued to express environmental concerns regarding endangered species and environmental justices documentation.

Dated: May 5, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–11171 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4722–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed April 24, 1995 Through April 28, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950164, Final EIS, BLM, AZ, Cypus Tohono Open Pit Mine Expansion Project, Plan of Operation Approval and Drilling Permit, Implementation, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, AZ, Due: June 5, 1995, Contact: Moon Hom (602) 650–0225.

EIS No. 950165, Final EIS, BLM, CA, Rand Open Pit Heap Leach Gold Mine Project, Construction, Expansion and Operation, Conditional-Use-Permit and Plan of Operations and Reclamation Plan, Randburg, Kern County, CA, Due: June 5, 1995, Contact: Ahmed Mohsen (619) 384–5400.

EIS No. 950166, Final Supplement, AFS, WA, East Curlew Creek Analysis Area Harvesting Timber and Road Construction, Updated Information, Portion of Profanity Roadless Area, Colville National Forest, Republic Ranger District, Ferry County, WA, Due: June 5, 1995, Contact: Patricia Egan (509) 775–3305.

EIS No. 950167, Draft Supplement, DOE, WA, Puget Power Northwest Washington Electric Transmission Project, Updated Information, Construction and Operation, Whatcon and Skagit Counties, WA, Due: June 19, 1999, Contact: Ken Barnhart (503) 230–3667.

EIS No. 950168, Final EIS, FHW, NC, I–85 Greensboro Bypass Study Area Transportation Improvement, I–85 South of Greensboro to I–40/85 east of Greensboro, Funding, Possible Section 404 Permit, City of Greensboro, Guilford County, NC, Due: June 5, 1995, Contact: Nicholas L. Graf (919) 856–4350.

EIS No. 950169, Draft EIS, FAA, WA, Seattle-Tacoma (Sea-Tac) International Airport Master Plan Update for Development Actions, Funding, Airport Layout Plan Approval and COE Section 404 Permit, King County, WA, Due: August 3, 1995, Contact: Dennis Ossenkop (206) 227–2611.

EIS No. 950170, Draft EIS, FHW, WI, US 12 Highway Improvement, Sauk City of Middleton, Funding and COE Section 404 Permits Issuance, Sauk and Dane Counties, WI, Due: June 26, 1999, Contact: Richard Madrzak (608) 264–5968.

EIS No. 950171, Final Supplement, NRC, TN, Watts Bar Nuclear Plant Units 1 and 2, Operating License, Rhea County, TN, Due: June 6, 1995, Contact: Scott Flanders (301) 415–1172.

EIS No. 950172, Final EIS, AFS, CA, Shasta-Trinity National Forests Land and Resource Management Plan, Implementation, Humboldt, Modoc, Shasta, Siskiyou, Tehama and Trinity Counties, CA, Due: June 5, 1995, Contact: Steve Fitch (916) 246–5222.

EIS No. 950173, Draft EIS, USN, TX, Mine Warfare Center of Excellence (MWCE) Establishment, Construction and Operations, Magnitic Silencing Facility (MSF), Aviation Mine Count Measures (AMCM) and Sled Facility, Possible NPDES Permit, COE Section 10 and 404 Permits, Corpus Christi Bay Area, TX, Due: June 19, 1995, Contact: Will Sloger (803) 743–0797.

EIS No. 950174, Draft EIS, BOP, LA, Pollock US Penitentiary and Federal Prison Camp (FPC), Construction and Operation, Site Selection of a former World War II Military Installation, Grant Parish, LA, Due: June 19, 1995, Contact: David J. Dorworth (202) 514–6470.

EIS No. 950175, Final EIS, AFS, CA, Cottonwood Fire Restoration Project, Implementation, Tahoe National Forest, Sierraville Ranger District, Sierra County, CA, Due: June 5, 1995, Contact: Karen Walden (916) 478–6253.

EIS No. 950176, Draft Supplement, BLM, NM, Fence Lake Federal Coal Project, Updated Information for Approval or Disapproval of Salt River Project Agricultural Improvement and Power District (SRP), Lease Approval, Mining Plan Permit Application, Catron and Cibola, Cos, NM and Apache County, AZ, Due: June 28, 1995, Contact: Robert H. Block (303) 672–5610.

EIS No. 950177, Draft Supplement, COE, TX, OK, Red River Chloride Control Project, Construction and Operation Methods, Updated and additional Information, several counties TX and OK, Due: June 19, 1995, Contact: David L. Combs (918) 669–7188.

EIS No. 950178, Final EIS, DOD, CA, California Acoustic Thermometry of Ocean Climate (ATOC) Program and Marine Mammal Research Program (MMRP), Funding, Marine Mammal Research Permit and COE Nationwide Permits Issuance, Monterey County, CA, Due: June 5, 1995, Contact: Pat Aguilar (619) 534–3860.

Dated: May 2, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–11170 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5203–5]

Waste Analysis Guidance Manual: The Resource Conservation and Recovery Act (RCRA); Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period for the Waste Analysis Guidance For Facilities That Burn Hazardous Wastes—Draft.

SUMMARY: On April 11, 1995, the Environmental Protection Agency announced a draft Waste Analysis Guidance For Facilities That Burn Hazardous Wastes is available for public comment (60FR18402). This guidance document was developed by the Office of Compliance for facilities that treat and dispose of hazardous wastes by using combustion technology as regulated under 40 CFR parts 264 and 265, Subpart O and 40 CFR part 266, Subpart H. Upon requests from several callers ordering the document, EPA is extending the date for which it will accept public comments on this document.

DATES: EPA will now accept public comments on this draft guidance document until June 2, 1995.

ADDRESSES: Copies of the Waste Analysis Guidance For Facilities That Burn Hazardous Wastes EPA/530/R–94/019 may be obtained by visiting the RCRA Information Center or by calling the RCRA Hotline. The public must send an original and two copies of their comments to: RCRA Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW.,Washington, DC 20460. Place the docket number (#F–95–WAGA–FFFFF) on your comments. The RCRA Information Center is located in room M2616 at EPA Headquarters, 401 M Street S.W., Washington, DC 20460. It is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials. Call (202) 260–9327 for appointments. Copies cost 0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information and a copy of the document contact the RCRA Hotline at (800) 424–9346 toll-free or (703) 412–9810 in the Washington, DC, area. For information on specific aspects of the guidance manual, contact John Dombrowski at (202) 564–7036, Chemical, Commercial Services and Municipal Division (2224–A), Office of Compliance, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated: April 24, 1995.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 95–11145 Filed 5–4–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 1, 1995.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW, Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Dorothy Conway, Federal Communications Commission, (202) 418–0217 or via internet at DConway@FCC.GOV. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: N/A.

Title: Construction of SMR Stations Request for Additional Information.

Form No.: FCC 800I.

Action: New collection.

Respondents: Individuals or households; Businesses or other for-profit.

Frequency of Response: On occasion.

Estimated Annual Burden: 300 responses; 2.5 hours burden per response; 750 hours total annual burden.

Needs and Uses: FCC 800I is used as a method of verifying if licensee has placed station into operation and for notifying the Commission of actual number of mobile units placed in operation after license grant. The data collected ensures licensees are not authorized for more mobile units then they are actually using.

OMB Number: 3060–0360.

Title: Sec. 80.409(c) Public Coast Station Logs.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 316 recordkeepers; 95 hours burden per recordkeeper; 30,020 hours total annual burden.

Needs and Uses: This requirement is necessary to document the operation and public correspondence service of public coast radiotelegraph, public coast radio telephone stations and Alaska-public fixed stations. This information is used by FCC personnel during inspection and investigations to ensure compliance with applicable rules and to assist in accident investigations.

OMB Number: 3060–0364.

Title: Sec. 80.409(d) & (e) Ship Radiotelegraph Logs, Ship Radiotelephone Logs.

Form No.: N/A.

Action: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

Frequency of Response: Recordkeeping Requirement.

Estimated Annual Burden: 10,950 recordkeepers; 47.3 hours burden per recordkeeper; 517,935 hours total annual burden.

Needs and Uses: This requirement is necessary to document that compulsory radio equipped vessels and high seas vessels maintain listening watches and logs as required by statutes and treaties. This information is used by FCC personnel during inspections and investigations to insure compliance with applicable rules and treaties and to assist in vessel distress and disaster investigations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 95–11117 Filed 5–4–95; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL MARITIME COMMISSION

[Docket No. 94–24]

Petition of South Carolina State Ports Authority for Declaratory Order; Order Granting Petition in Part and Denying Petition in Part

South Carolina State Ports Authority (''SCSPA'' or ''Petitioner'') has filed with the Federal Maritime Commission (''Commission'' or ''FMC'') a Petition For A Declaratory Order (''Petition'') pursuant to Rule 68 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.68 (1993), to allow it to act without peril in issuing in its FMC-filed tariff guidelines for the criteria it will apply to license stevedores and marine terminal operators (''MTOs'') operating at SCSPA facilities. SCSPA alleges that ''economic regulation'' of stevedores and MTOs doing business or seeking to do business at public port facilities is necessary to protect the public investment in the facilities.

Notice of the filing of the Petition was published in the **Federal Register** inviting interested parties to submit replies to the Petition.[1] Twelve parties filed replies to the Petition. Following receipt of all but two of the replies, SCSPA filed a Motion For Leave To File A Response (''Motion''). Six parties responded to the Motion.

The Petition

SCSPA represents that it seeks ''to remove uncertainty, to terminate a controversy, and to allow it to act without peril upon its view of the right to regulate the activity of persons seeking to perform stevedore and public marine terminal functions at [SCSPA] facilities.'' Petition at 1. SCSPA maintains that its Petition is an appropriate subject for exercise of the Commission's authority to entertain petitions for declaratory orders under

[1] Two parties subsequently requested and were granted a 30-day extension of time to file replies.

Rule 68.[2] The Petition is supported by the Declaration of W. Don Welch, Executive Director of SCSPA.

SCSPA describes itself as an operating port which provides public terminal facilities and performs terminal services, including stuffing and stripping containers for some shippers, at its facilities. SCSPA states that it ''has in its tariff a provision which gives it broad authority 'to control all services performed in connection with cargo moving through or over its facilities' and has used that authority to decide which entities may perform stevedore and related functions at Ports Authority facilities.'' Pet. at 5.

With respect to marine terminal services, SCSPA claims the authority to determine whether it will permit such services to be performed by others at its facilities and to establish both the terms under which it will allow such operations and the identity of firms which will be authorized to operate. SCSPA advises that it performs marine terminal services at its public facilities with about 250 employees. SCSPA states that it ''makes a profit on this operation, and does not desire to have third parties use its facilities to compete with it.'' Pet. at 10. Therefore, it ''has a rule that it will not permit *any* third party to hold itself out to the public to perform marine terminal container operations on Ports Authority facilities.'' *Id.* at 11.

SCSPA informs that the major carriers calling at Charleston have ''licensed'' facilities at which marine terminal services are performed by third parties under contract with the carriers and that SCSPA's public marine terminal services are utilized by the smaller lines calling at the port and approximately 25 shippers.

SCSPA indicates that stevedoring operations at the port have changed drastically over the past twenty years as a result of the effects of containerization, including the International Longshoremen's Association 50-mile Rules on Containers. Instead of just three locally-owned and operated stevedoring firms serving numerous carriers at the port, there are now said to be nine stevedore companies, most operating as units of large national companies, serving only a handful of carriers. These national concerns, says SCSPA, have little or no interest in advancing the economic well being of the port or attracting cargo to Charleston which they might handle at another port at which they operate.

SCSPA advises that it already requires stevedores seeking to operate at the port to ''register,'' but now wishes to implement procedures involving economic and financial standards for the licensing of stevedores. These standards would include an assessment of the applicant's financial resources, safety record, conformity with environmental requirements, and safety and substance abuse programs.[3] Applicants would also be required to demonstrate ability to ''promote and foster commerce through the ports of South Carolina.'' SCSPA reports that twenty of twenty-five deepwater ports it surveyed in the South Atlantic and Gulf Coast require that stevedores obtain a license to operate from the public port agency.

SCSPA believes its actions are lawful but wishes to remove doubt, created by stevedore interests, so that it will not be in peril for implementing new licensing procedures. The ''doubt'' to which SCSPA refers arises from a January, 1993, informal request by ''a national group of stevedore companies, the Independent Marine Terminal Operators Council (''IMTOC''),'' that the FMC investigate the practices of SCSPA and the port authorities of Georgia, North Carolina and Virginia to determine whether these ports violated the Shipping Act of 1984 (''1984 Act''), 46 U.S.C. app. § 1701, *et seq.*, by refusing to permit operations by third parties at their facilities. The FMC's Managing Director declined to recommend the initiation of such an investigation, stating that the matter would more appropriately be the subject of a complaint.[4] SCSPA indicates that the South Carolina Stevedores Association, as association of local stevedores, has since continued to seek clarification and modification of SCSPA's policy regarding reservation of public marine terminal services work at SCSPA facilities to itself.[5]

SCSPA maintains that the Commission has jurisdiction to determine the lawfulness of economic regulation of stevedores by public port agencies, citing *Baton Rouge Marine Contractors* v. *FMC*, 655 F.2d 1210 (D.C. Cir. 1981); *Cargill, Inc.* v. *FMC*, 530 F.2d 1062 (D.C. Cir.), *cert. denied*, 429 U.S. 868 (1976) (''*Cargill*''); and *Greater Baton Rouge Port Commission* v. *United States*, 287 F.2d 138 (5th Cir.), *cert. denied*, 368 U.S. 985 (1961). The guidelines SCSPA wishes to issue should be considered a reasonable exercise of its business judgment, to which the FMC should defer, says SCSPA. The Commission is said to have approved similar business-based actions, or at least deferred to the local authority to make such determinations, in *Petchem, Inc.* v. *Canaveral Port Authority*, _____ F.M.C. _____, 23 S.R.R. 974 (1986), *aff'd sub nom. Petchem, Inc.* v. *FMC*, 853 F.2d 958 (D.C. Cir. 1988) (''*Petchem''); and Seacon Terminals, Inc.* v. *Port of Seattle*, _____ F.M.C. _____, 26 S.R.R 886 (1993) (''*Seacon*'').

Similarly, SCSPA argues that its self-preference with respect to the performance of public marine terminal services at its facilities is not violative of the Shipping Acts' proscriptions against discrimination, in section 16 of the Shipping Act, 1916 (''1916 Act''), 46 U.S.C. app § 815 and sections 10(b) (11) and (12) of the 1984, Act, 46 U.S.C. app. § 1709(b) (11) and (12), because there is no triangular relationship involved in self-preference. In support of this proposition, SCSPA refers the Commission to *Puerto Rico Ports Authority* v. *FMC*, 642 F.2d 471 (D.C. Cir. 1980), as well as the decision of the Commission's predecessor in *Anglo Canadian Shipping Co., Ltd. v.* Mitsui Steamship Co., Ltd., 4 F.M.B. 535 (1955).

Replies to the Petition

A. Replies in Support

Replies in support of the Petition were filed by four Ports and one association. The American Association

[2] Rule 68 provides, *inter alia*, that ''the Commission may, in its discretion, issue a declaratory order to terminate a controversy or to remove uncertainty.'' Subsection (b) of the Rule provides further that:

Petitions under this section shall be limited to matters involving conduct or activity regulated by the Commission under statutes administered by the Commission. The procedures of this section shall be invoked solely for the purpose of obtaining declaratory rulings which allow persons to act without peril upon their own view. Controversies involving an allegation of violation by another person of statutes administered by the Commission, for which coercive rulings such as payment of reparation or cease and desist orders are sought, are not proper subjects of petitions under this section. Such matters must be adjudicated either by filing of a complaint under section 22 of the Shipping Act, 1916 or section 11 of the Shipping Act of 1984 and § 502.62, or by filing a petition for investigation under § 502.69.

[3] The guidelines, attached to the Petition at Tab B, require each applicant for a stevedoring license to submit, *inter alia:* its articles of incorporation; a list of managerial employees, including supervisors, superintendents and foremen; resumes of its chairman, president, vice-president, chief financial officer and local business representative; a list of all equipment owned or leased to be used at SCSPA facilities; financial statements or other documents demonstrating credit-worthiness and resources, as well as credit references; a list of business licenses; a list of business locations and offices, describing the business done at each location; a list of actual or potential customers to be served at the port; and insurance certificates an copies of safety, training and substance abuse programs.

[4] The IMTOC letter is attached to the Petition at Tab C. The Managing Director's response appears at Tab D to the Petition.

[5] *See* Tabs E and F to the Petition.

of Port Authorities (''AAPA'') reports that public investment in port facilities, including those of operating ports as well as landlord ports, is enormous ($12.5 billion over 46 years) and must be protected by the public entities (ports) created for that purpose. AAPA states that:

> The goals that [SCSPA] seeks to achieve are laudatory, particularly in light of its status as a public agency and the duty that it shares with other port agencies to protect its investment of public funds.
>
> * * * * *
>
> It is the position of AAPA that public port authorities, because of their nature as governmental enterprises be given the widest discretion possible in controlling and regulating and marine terminal facilities under their jurisdiction.

AAPA Reply at 2–3. AAPA declares that public port authorities * * *.

> * * * charged with statutory responsibilities relating to the planning, development, financing and operation of marine terminal facilities * * * financed through the sale of bonds which pledge as security the revenues of the public agencies which offer them, * * * are motivated not simply by a profit motive but by a mandate from the people to stimulate economic growth and to protect the public's investment.

Id. at 3–4. AAPA maintains that port authorities are entitled to impose reasonable conditions on those who seek to do business within the port; to find otherwise would be to grant them less freedom to choose their business partners than is enjoyed by all other enterprises.

The Tampa Port Authority (''Tampa''), an operating port, supports SCSPA's right to reserve to itself the right to perform public MTO functions at its facilities and to apply economic criteria in granting permits or licenses for stevedores and MTOs to operate at its facilities. Tampa declares that the port provides major employment (in Tampa's case, 68,000 jobs), tax revenues, income and economic impact on its region. Tampa reports that it licenses stevedores and MTOs under its tariff. Presently, Tampa advises that it is defending a suit in state court challenging its right to reserve general cargo terminal operations for itself and is seeking to have the suit referred to the FMC under its primary jurisdiction. Tampa's arguments in favor of the port's right to regulate operations at or in connection with its facilities, and to reserve operations to itself, are said to be supported by the same cases cited by SCSPA.

The reply in support by the Virginia Port Authority refers to the responsibilities of public port authorities to enhance the long-term economic growth of their respective ports and to protect their public investors.

The Board of Trustees of the Galveston Wharves (''Galveston'') also supports SCSPA's proposal to license stevedores and the economic standard to be applied by SCSPA.[6] Galveston indicates that it presently licenses stevedores for operation at its facilities, but does not apply the specific economic criteria proposed by SCSPA.[7] Galveston states that it would amend its tariff to adopt the same proposal if SCSPA is successful. Galveston suggests, based on its own experience, tha it is necessary for the Commission to make clear in any ruling that port authorities may deny stevedore licenses if sufficient economic demand does not exist to support such services. Specifically, Galveston asserts that ports should be able to base stevedore licensing decisions on such criteria as: existing demand for stevedore services; an applicant's support by a vessel carrier; proof that an applicant will bring new business to a port; and proof that grant of an additional license will not result in duplicative services or destructive competition which will impair the quality of port services. In support of its arguments for the authority claimed by itself and SCSPA to regulate stevedores, Galveston cites the *Petchem, Seacon,* and *Cargill* cases relied on by SCSPA.

Lake Charles Harbor & Terminal District (''Lake Charles''), a political subdivision of the state of Louisiana, describes itself as a general and bulk cargo port, serving more than 800 ships and barges in 1992 and 1993. Much of the cargo is said to be P.L. 480 agricultural aid for the Department of Agriculture, which uses a sophisticated, computer analysis to determine the lowest landed cost to select the exit port for shipments. By keeping its charges to cargo low, Lake Charles states it has attracted this cargo and moved 1.1 million tons over facilities meant to handle annual volume of 600,000 tons. It allegedly has done so in part by having an exclusive contract with a single firm to load and unload cargo and to move and spot railcars on a continuous basis. Lake Charles advises that it requires stevedores to get a permit to work and states that it is considering tariff amendments to tie the grant of a permit to the economic interests of the port. Lake Charles suggests that the Commission give its blessing to these business-based decisions by granting the Petition.

B. Replies in Opposition

Carolina Marine Handling (''CMH'') suggests that the Commission deny or return the Petition unanswered. CMH says the matter is one for the SCSPA Board of Directors. CMH alleges that SCSPA is trying to monopolize local stevedoring functions of stuffing and stripping containers and flatracks, and fears that SCSPA may even attempt to reserve to itself deep-sea stevedoring if its revenues continue to decline. More specifically, CMH alleges that the proposed guidelines for licensing stevedores are ''overly broad, subjective and subject to abuse by the Executive Director.'' CMH Reply at 1. CMH objects particularly to the guidelines' requirements that applicants provide resumes, financial statements, customer lists and customers targets, as part of the licensing process.

In the most comprehensive reply filed by any party, Ceres Corporation argues that the Petition is inappropriate for declaratory order disposition. Ceres states that it provides stevedore and marine terminal services at Charleston through an affiliate, Ceres Marine Terminals, Inc., which will be directly affected by the proposed tariff rules. Its Reply is supported by two affidavits: That of Lester Francis, former General Manager of Ceres Marine Terminal, Inc.'s stevedoring facility at Charleston, which describes operations at Charleston by Ceres and other stevedores; and that of James R. Bramson, an attorney, who reports that he examined 23 Atlantic and Gulf coast port tariffs and found no similar licensing provisions. Bramson reports that his survey of port tariffs uncovered a few license provisions but none requiring production of new business or a pledge of new business to permit operations.

According to Ceres, all container terminal facilities at the port of Charleston are owned by SCSPA; a few carriers with large volumes of traffic lease some of the container terminal facilities at which private stevedore companies, including Ceres, perform marine terminal services for the containerized cargo. Receipt and delivery of containerized cargo at the public terminal is allegedly reserved by SCSPA. In addition, all CFS cargo (cargo stuffed or stripped at the port) is said to

[6] Galveston's comments are supported by the Declaration of Ernest Connor, General Manager of Galveston Wharves.

[7] It reports that, because the number of companies exceeds demand, Galveston quit granting new licenses and, as a result, has been challenged in court and at the Commission on its right to withhold a license. Although these cases were ultimately dismissed at both the District Court and the FMC, it cost the port a great deal for attorney's fees to defend the suits.

be handled at the public facilities owned and operated by SCSPA; receipt and delivery of all such cargo is allegedly reserved by SCSPA for its own performance. Most of the cargo controlled by carriers (including but not limited to those with leased container facilities) is stuffed and stripped by private stevedores, reports Ceres; shipper-controlled cargo is stuffed and stripped by SCSPA.

Ceres argues that the tariff is unreasonable because it would extend the port's monopoly of cargo receiving and delivering and stripping and stuffing of containers from shipper-controlled cargo to all cargo except that of the few large carriers with leased facilities. Under the proposed guidelines, SCSPA would continue to reserve to itself the receiving and delivery of all CFS and containerized cargo at the public terminal; in addition, Ceres points out, SCSPA would reserve for itself the stripping and stuffing of CFS cargo under the control of carriers other than the few who lease terminal facilities, as well as the already-reserved shipper-controlled CFS cargo. Ceres points out that the Commission is asked to rule on the lawfulness of these practices without benefit of economic or financial analysis which shows the necessity for the practice, the effect on stevedores, or the amount of cargo served by the SCSPA or the stevedores to be affected by the rule.

With respect to the specific elements of the licensing guidelines, Ceres states that the past SCSPA practice of requiring annual ''registration'' of stevedores operating at the port involved only a one-page form identifying responsible persons and credit references, with proof of insurance coverage, which Ceres compares to the much more extensive and intrusive requirements of the proposed licensing guidelines. In addition to the information requirements noted at footnote 3, above, Ceres points out that the Executive Director is authorized to request additional information ''as he sees fit'' and is directed to consider, in addition to the financial and other factors specified and such other factors as he deems relevant, the ability of the applicant to ''promote and foster commerce through the Ports of South Carolina.''

Ceres takes issue with the lack of factual material offered in support of the Petition. Ceres notes for example that SCSPA has neither alleged nor shown that any stevedore at the Port of Charleston has ever diverted to another port traffic that would otherwise have moved through Charleston, although the likelihood of such behavior is offered as justification for requiring that stevedores demonstrate the ability to promote and foster commerce through South Carolina ports. Similarly lacking are said to be alleged instances of destructive competition among stevedoring companies, which, to the contrary, notes Ceres, have objected only to SCSPA's solicitation of their private customers in the past. Ceres points out that, according to SCSPA's Petition, a port formerly served by just three local stevedores now supports the operations of nine stevedoring companies and states that no stevedore has left the Port of Charleston in at least the past three years. Ceres Reply at 12.

Ceres notes that the Petition refers to various objections raised in the past by IMTOC, Stevedoring Services of America and CMH to its practice of reserving public marine terminal services to itself, and offers those objections as a basis for its need to secure a declaratory order to terminate a controversy and enable it to act on its proposed tariff guidelines without peril. Ceres argues that the objections raised related to the reservation of terminal services only, not the later-drafted proposal to license stevedores. Ceres also represents that the stevedores sought to resolve their differences with SCSPA concerning the division of operating rights between the private and public entities at the Port prior to SCSPA's promulgation of the guidelines and its request for advance approval by the Commission through the Petition. Ceres protests that SCSPA is here seeking FMC approval in advance of its actions on the basis of a very sketchy factual presentation.

Ceres alleges that SCSPA is seeking Commission approval for exclusive arrangements rarely found reasonable, and then only on fact-intensive records showing extraordinary circumstances not present at Charleston. This case, moreover, is said to involve a major container port, unlike the exclusive franchising cases involving individual terminals or small or start-up ports, such as *Petchem*, relied on by SCSPA.

Consideration of the Petition would require significant factual investigation and hearings on material issues of fact, including economic justification for the proposal and the impact on stevedores presently operating at the port, says Ceres. The Petition is therefore said to be unsuitable for disposition on declaratory order.

The licensing standards, Ceres charges, are vague and subjective and therefore unreasonable. With respect to the reservation of MTO services, Ceres argues that, even if the antidiscrimination provisions of section 16 of the 1916 Act and sections 10(b)(11) and (12) of the 1984 Act do not apply to the proposal in the absence of a triangular relationship, as urged by SCSPA, the reasonableness standard of section 17 of the 1916 Act, 46 U.S.C. app. section 816, and section 10(d) of the 1984 Act, 46 U.S.C. app. section 1709(d), does apply, and that the practice is unreasonable under that standard. And, says Ceres, the unlawful preference sections probably do apply where, as here, the port authority wears two hats: MTO and stevedore, and acts in one capacity to favor the other.

The Carriers Container Council, Inc. (''CCCI''), claiming to represent carriers of 90 per cent of the containerized cargo moved through the Port of Charleston, states that, while SCSPA has a monopoly of MTO functions at Charleston, carriers now have a choice of nine stevedores to service their vessels. CCCI alleges that the proposed tariff guidelines would deprive the carriers of this choice. In addition, CCCI objects that the licensing standards are vague, subjective, and unconstitutionally delegate to the FMC a state function: review of the actions of the state port authority acting under state law. The stated standards are said to show bias in favor of local companies, which was found to violate the Shipping Act in *Plaquemines Port, Harbor and Terminal District* v. *FMC,* 838 F.2d 536 (D.C. Cir. 1988). CCCI argues that an evidentiary hearing is necessary to test the proffered economic justification for the licensing scheme, and that a triangular relationship is not necessary to find a violation of section 16 where the port authority wears two hats, as here, citing *Puerto Rico Ports Authority* v. *FMC,* 642 F.2d at 489.

Stevedoring Services of America (''SSA'') opposes the Petition and asserts that it seeks an inappropriate use of Rule 68: both an advance ruling that its implementation of its guidelines will not violate the Shipping Acts of 1916 and 1984 (quoting the Petition as seeking ''a Commission declaration that its prospective stevedore license judgments will be lawful.'' SSA Reply at 4, *quoting* Petition at 6) and a ruling as to past conduct which has already been alleged, by IMTOC, to be violative of the Acts. The latter request is said to be akin to an attempt to use the declaratory order procedure to defend against past or future complaint proceedings, ruled improper in *Petition of Yangming Marine Transport Corp. for Declaratory Order,* _____ F.M.C. _____, 24 S.R.R. 1057, 1058 n.3 (1988), says SSA.

SSA also objects to the stevedoring guidelines requirement that applicants

provide a customer list. SSA argues that the guidelines are objectionable because they would deprive stevedores of the right to operate, are vague and subjective, would impermissibly permit monopoly practices by SCSPA, and would deprive carriers of their right to a stevedore of their choice. With respect to the guidelines' requirement that stevedore license applicants demonstrate ability to promote and foster commerce through South Carolina ports, SSA points out that no similar requirement is placed on carriers who call the port, and that the carrier, rather than the stevedore, controls the choice of port to be served by a vessel. Finally, SSA alleges that the guidelines impermissibly seek to deprive stevedores of the right to redress in state and federal courts, through a provision that exclusive appeal of a license denial by the Executive Director and the Board of the Ports Authority is to the Federal Maritime Commission. This, says SSA, would deprive the applicant of rights to challenge the action under laws other than the Shipping Acts. SSA urges that the Petition be denied or investigated by the FMC through a fact-finding proceeding initiated by show cause.

Maritrend, Inc., a stevedoring company operating in two ports in the Gulf region, declares that the guidelines are too vague and subjective: licensing should be based solely on objective criteria such as insurance, bonding, etc., not whether the stevedore operates at competing ports, uses non-union labor or competes with existing licensees. The guidelines are said to reflect ''loyalty'' requirements and local favoritism which are inappropriate considerations according to Maritrend. Also allegedly inappropriate is the guidelines' requirement that applicants show that they will bring ''new business'' to the port, because carriers, not stevedores, control the cargo and selection of port calls.

IMTOC, among whose members are MTOs who perform stevedoring at SCSPA, claims that, with respect to the reservation to SCSPA of the right to perform all MTO operations at its facilities, the Petition is the mirror image of the IMTOC request for investigation refused by the FMC last year. IMTOC agrees with the FMC Managing Director's determination in his letter to IMTOC that the matter can be concluded only after a proceeding permitting receipt of evidence and legal arguments from all affected parties. IMTOC submits that a full investigatory proceeding is necessary; therefore, a declaratory order is not appropriate. Regarding the possible violation of section 16 of the 1916 Act by SCSPA's reservation of MTO functions at its facilities, IMTOC maintains that because some third party MTOs are permitted to operate the SCSPA facilities of licensed carriers, as SCSPA admits, the triangular relationship necessary to find a violation of section 16 does exist. Moreover, IMTOC claims, no justification under *Petchem* exists for the exclusionary nature of SCSPA's practices: its only stated reason is unwillingness to forgo profits from its MTO operations, which is not a proper public purpose.

The South Carolina Stevedoring Association (''SCSA''), an association of privately owned stevedoring companies, some of which are also MTOs, who do business at South Carolina Ports, notes that the Petition asks the Commission to rule on the legality of two separate matters: the proposal to license stevedores eligible to work at SCSPA facilities, and SCSPA's past and present practices of excluding certain third-party terminal operations on its facilities. Neither the licensing issue nor the MTO exclusion issue can be determined on this Petition, claims SCSA. The MTO exclusion issue allegedly involves past and present conduct as to which the Petition does not begin to meet its burden of proof that there are no violations of the Shipping Acts.

And despite SCSPA's characterization of it, SCSA claims that the licensing issue does not concern the general authority of SCSPA to set reasonable terms and conditions for use of its facilities, but the reasonableness of the terms proposed. Those terms are said to include too many vague and unspecified powers of the Executive Director to establish requirements for applicants, revoke or suspend licenses, and condition licenses which are unreasonable on their face. SCSA submits therefore that the matter is unsuitable for determination on a petition for a declaratory order.

The licensing provisions are also argued to be objectionable because they require a ''loyalty oath'' of stevedores by requiring promotion of the interests of the port, in addition to the inappropriate statements about lack of local ownership. This requirement that local interests be promoted and favored does not, in SCSA's opinion, appear to be required of carriers that call at the port, or the MTOs who work for licensed carriers at the port; there is, moreover, no indication of their loyalty or lack of loyalty to the port. SCSA charges that these attempts to favor local interests, or to recreate the days of local stevedoring firms, are an unconstitutional burden on interstate commerce. SCSA concludes that the FMC should deny the Petition and order a full-scale evidentiary hearing on an order to show cause.

SCSPA Motion for Leave To File a Response and Replies

SCSPA requests an opportunity, normally prohibited by the terms of Rule 68,[8] to address ''1) certain erroneous assumptions, and 2) misapprehensions of fact, made by parties responding to the petition * * *.'' SCSPA Motion at 1. SCSPA states that grant of its Motion will narrow some of the issues raised by opponents of the Petition and eliminate other issues.

SCSPA believes that opposition to the Petition stems in part from a misunderstanding of the purposes and goals of SCSPA's proposed regulation of stevedores and MTOs. Referring specifically to the concern of CCCI that the guidelines will deprive carriers of their choice of stevedores, SCSPA offers to add appropriate language to the guidelines to remove that issue if it is permitted to file a response; also to be addressed would be the ''loyalty oath issue,'' as raised by SCSA.

Stating that some opponents have misunderstood ''some of the facts underlying the * * * Petition,'' relying on ''facts which are demonstrably incorrect,'' SCSPA seeks the opportunity to ''sort out the incorrect fact assertions and * * * correct them'' in a response. Motion at 4. Nevertheless, SCSPA does not ''mean that there may not be some facts as to which there is a dispute * * *.'' *Id.*

SCSPA notes that the Commission permitted a response to replies in another declaratory order proceeding, *Matson Navigation Co., Inc.—Transportation of Cargoes Between Ports and Points Outside Hawaii and Islands Within the State of Hawaii,* _____ FMC _____, 25 S.R.R. 245 (1989), so that it could ''render a definitive verdict'' on the issue. SCSPA Motion at 5, *quoting Matson*, 25 S.R.R. at 245. Similar to the procedure used in that case, SCSPA suggests that it be permitted to file a response limited to 20 pages and that interested parties be permitted to make surrebuttal filings within 15 days.

Six parties filed Replies to the Motion. Maritrend claims that the Motion demonstrates the inappropriateness of proceeding by declaratory order in this matter. SSA reiterates its position that allegations of

[8] Rule 68(e) provides that ''No additional submissions will be permitted unless ordered or requested by the Commission.''

violation of the Shipping Acts are outside the scope of Rule 68 and maintains that declaratory orders are not suited to dispose of contested factual issues, citing *Petition for Declaratory Order of Seatrain International, S.A.,* 21 F.M.C. 187 (1978). IMTOC suggests that the Motion ''be denied or held in abeyance until the Commission decides what to do with the original Petition * * *.'' IMTOC Reply at 1. Ceres does not object to SCSPA's request ''so long as any response is *strictly limited* to a factual presentation that is *directly responsive* to specific factual assertions or assumptions made by others.'' Ceres Reply at 1 (emphases in original).

Ceres states that it does not believe that any factual supplementation of the record by SCSPA can cure the flaws in its Petition. For example, says Ceres, SCSPA wants to respond to questions Ceres raised about SCSPA's survey of licensing practices at other ports, but the real problem is not whether 20 or even all other South Atlantic and Gulf ports license stevedores, but the particular requirements and practices proposed by SCSPA. Ceres takes the position that SCSPA has not requested, nor should it be permitted, to respond to the legal arguments offered by those opposed to the Petition.

CCCI reads the Motion as indicating that ''the SCSPA confesses that it made an error in not telling the carriers that they have a right to appoint their own stevedore to work anywhere on the terminals.'' CCCI Reply at 1. CCCI suggests that SCSPA end the dispute and misunderstanding by withdrawing its Petition. Otherwise, CCCI opposes the Motion.

SCSA argues that because Rule 68 requires that a petition be accompanied by petitioner's complete legal and factual presentation, and does not provide for submission of additional evidence or argument by a petitioner, the Motion is in reality an amended petition. SCSA notes that the Motion addresses only factual questions related to the proposed stevedore licensing scheme, rather than past and present SCSPA practices concerning the exclusion of certain marine terminal operators. SCSA submits that the Motion should be denied, but that, if it is granted, at least 30 days be permitted for the filing of responses to SCSPA's submission.

Discussion

The replies to the Petition reflect a division of views between stevedores and non-port MTOs, who oppose the proposals, and public ports, who support the proposals. The level of interest and concern generated by the proposals is arguably an indication that application of the Commission's resources to resolution of the controversy is appropriate.

However, as many of the opponents point out, SCSPA's petition has two purposes: To secure the Commission's imprimatur of lawfulness of its present and continuing practice of reserving certain terminal functions at its public facilities for itself and to prospectively assure the lawfulness of its proposal to license stevedores under the criteria in its guidelines. These two areas of concern covered by the Petition differ to some extent as to their impact and eligibility for disposition on a petition for a declaratory order.

A distinction may be made between issues which appear to be appropriate for disposition under Rule 68 and those which are not. Thus, we would agree with those parties who regard the issue of SCSPA's reservation of terminal functions for itself as inappropriate for disposition on declaratory order because it involves past and present conduct which may entail violations of the Shipping Acts.

We are reluctant to undertake a proceeding on a declaratory order which, even implicitly, involves ruling on the lawfulness of Petitioner's past activities. The new policies governing reservation of functions are incorporated in the draft tariff rule attached at Tab B to SCSPA's Petition, while the policies applied in the past are reflected in the existing tariff rule attached to the Petition at Tab A. While the policies regarding reservation of certain MTO functions for future application are not co-extensive in coverage with the policies SCSPA has applied to its marine terminal operations for some time, they are, nevertheless, intertwined: they differ in scope, not kind. Ruling on the legal issue raised—the reservation of functions and exclusion of competing MTO's by the public owner of the facility—with respect to the future would necessarily determine the same issues raised with respect to SCSPA's past conduct. These practices, reflected in SCSPA's present tariff, were the subject of IMTOC's 1993 informal request for an FMC-initiated investigation of the practices of SCSPA and three other public ports, rejected by the Commission's Managing Director. We therefore find these issues procedurally inappropriate for determination under Rule 68. The declaratory order proceeding initiated herein will not address the merits of SCSPA's reservation of terminal functions for itself. SCSPA's reservation practices are neither found lawful nor prohibited by anything herein.

The proposed tariff rule for the licensing of stevedores, on the other hand, raises issues which are uniquely within the expertise of the Commission, do not involve possible past or present violations of the Shipping Acts, and, insofar as they arise under the Shipping Acts, are not issues which are or may be raised in another forum.[9] In *United States Lines, S.A.—Petition for Declaratory Order Re: The Brazil Agreements, order entertaining petition and referring matter to administrative law judge,* _____ F.M.C. _____, 24 S.R.R. 1034, 1040 (1988) (''*Brazil Agreements*''), the Commission discussed the factors to be assessed in determining whether to entertain a petition which is within the Commission's substantive jurisdiction. Analyzing cases in which declaratory orders had been granted or denied on the merits, the Commission explained that * * *

> * * * the following weigh heavily in favor of issuance of such orders (and their absence against it): (1) Presentation of clear-cut legal issues and non-disputed facts; (2) ability of the Commission to resolve all issues in a proceeding so as to terminate the controversy; (3) presence of issues of fact or law which require the Commission's expert knowledge or judgment; (4) non-pendency of other proceedings or absence of need to resort to other tribunals to resolve matters in dispute; (5) claim which is purely declaratory in nature as opposed to an action for reparation for violation of statutes or regulations.

In *Brazil Agreements,* the Commission concluded that the issues presented, which involved interpretation of a Commission-approved agreement, were clear-cut and appropriate for determination by the agency. Although some factual issues were also in dispute, the Commission determined that disposition of those issues through an evidentiary hearing would not be inconsistent with issuance of an otherwise appropriate declaratory order. 24 S.R.R. at 1040. It is, similarly, clear from the replies to the Petition, as well as from SCSPA's Motion and the replies thereto, that there are material issues of fact in this case which cannot be disposed of on the basis of the existing record.

Some of the parties in this proceeding make the point that these disputed

[9] SSA raises an issue regarding the guidelines provision which allegedly would deprive stevedores of right to redress in state and federal courts by making license denials appealable only to the FMC. The question of whether this provision is an ''unreasonable practice'' under the 1916 and 1984 Acts is one for the Commission's determination in the first instance.

factual issues, involving the economic and other justification for the proposed licensing guidelines, as well as the need for the specific information being requested, render the Petition inappropriate. This does not appear to be an insurmountable problem; questions of disputed fact may be referred to an administrative law judge (''ALJ'') for an evidentiary hearing. *Brazil Agreements; see also In the Matter of Rates Applicable to Ocean Shipments via American President Lines,* _____ F.M.C. _____, 21 S.R.R. 1168, 1169 (1982). Furthermore, the participation in this case of other public ports with an interest in similar actions, as well as national stevedoring companies with operations at several ports, make this a particularly appropriate proceeding in which to determine these issues.

Some parties opposing the Petition allege that it is an inappropriate effort by SCSPA to secure FMC approval in advance for specific decisions SCSPA will make in granting or denying licenses. Ceres, in particular, notes that SCSPA specifically ''seeks a Commission declaration that its prospective stevedore license judgments will be lawful.'' Ceres Reply at 30, *quoting* Petition at 6. We see no bar to consideration of the lawfulness of the guidelines themselves on the same basis that the Commission is frequently called upon to determine an allegation that a tariff provision is unlawful not in its execution but in its terms. We see nothing in SCSPA's Petition or the guidelines themselves that would prevent the filing of a complaint alleging unfair prejudice or disadvantage in an individual case based on denial of a license.

Section 5(d) of the Administrative Procedure Act, 5 U.S.C. 554(e), authorizes each agency to issue declaratory orders ''* * * in its sound discretion * * *.'' Similarly, FMC Rule 68 provides, *inter alia,* that ''[t]he Commission *may, in its discretion,* issue a declaratory order to terminate a controversy or to remove uncertainty'' (emphasis added). In exercising its discretion, the Commission is entitled to assess the advantages and disadvantages associated with declaratory relief. Advantages include the opportunity to efficiently terminate a controversy or remove uncertainty, while disadvantages include both the administrative burden imposed by a policy of issuing advisory opinions and the familiar problems surrounding the adjudication of abstract controversies. *Climax Molybdenum Co. v. Secretary of Labor,* 703 F.2d 447, 452 (10th Cir. 1983). *See also Yale Broadcasting Co. v. FCC,* 478 F.2d 594, 602 (D.C. Cir.), *cert. denied,* 414 U.S. 914 (1973).

In this case, the issues with respect to the licensing guidelines do not appear to be abstract or lacking in sufficient factual context for determination upon a more complete record. We also note, as several parties have pointed out, that the burden of proof in commission proceedings falls on the proponent of a rule or order, 46 CFR 502.155, in this case SCSPA. *See, e.g.,* Ceres Reply at 15.

Therefore, we find that portion of the Petition which relates to the guidelines for licensing stevedores appropriate for declaratory relief and refer the matter to an administrative law judge for determination of critical facts and issuance of an initial decision. This approach will enable the Commission to fully resolve the questions raised in the Petition which are appropriate for declaratory relief, without addressing questions of past practices of SCSPA which the parties were free to raise by way of a complaint at any time.

All filings made to date with respect to the Petition will be incorporated into the record herein, for such purpose and weight as may be appropriate. In addition, we specify in our referral particular issues of fact and law to be resolved. SCSPA's Motion to Supplement the Record is denied as moot, because it will have an opportunity to supplement the record in the proceedings before the ALJ.

Therefore, it is ordered, That SCSPA's Petition for a Declaratory Order is granted to the extent that proposed tariff Rule 34–051 relates to the licensing of stevedores and it is referred to the Chief Administrative Law Judge, for assignment and issuance of an initial decision;

It is further ordered, That the administrative law judge to whom this proceeding is assigned shall exercise his discretion to insure that the issues are resolved in the most expeditious means consistent with due process and a sufficient record upon which to render a decision;

It is further ordered, That in reaching the ultimate issue of the lawfulness of the proposed tariff Rule No. 34–051 in this proceeding, attention shall be devoted to resolution of the following issues:

1. Whether SCSPA, a public marine terminal operator, engages in an unreasonable practice or acts in an unfairly prejudicial manner when it allows some stevedoring companies access to its facilities and denies such access to other companies on the basis of the public marine terminal operator's assessment of demand for services by carriers and shippers using its terminals, or similar economic criteria not related to an individual applicant for a license.

2. Whether any of the specific provisions of the proposed tariff Rule No. 34–051 are unduly prejudicial or are likely to unfairly discriminate against individual applicants for stevedoring licenses.

3. Whether the powers granted the Executive Director to require additional information or to place conditions on licenses granted constitute an unreasonable practice under the Shipping Acts.

4. Whether the provision of draft tariff Rule No. 34–051 restricting appeals of license denials or other actions to the Federal Maritime Commission constitutes an unreasonable practice or is otherwise unlawful under the Shipping Acts.

It is further ordered, That SCSPA's Petition for a Declaratory Order is denied in all other respects;

It is further ordered, That SCSPA's Motion For Leave to Supplement the Record is denied;

It is further ordered, That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61, the initial decision of the Administrative Law Judge shall be issued by May 1, 1996 and the final decision of the Commission shall be issued by September 2, 1996;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That each person who filed a reply to the Petition herein is designated a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rule of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on all parties of record.

By the Commission.*

Joseph C. Polking,

Secretary.

[FR Doc. 95–10993 Filed 5–4–95; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Investment Company, 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 May 30, 1995.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Citizens Investment Company, Inc., Glenville, Minnesota; to acquire 100 percent of the voting shares of Twin Lakes State Bank, Twin Lakes, Minnesota.

Board of Governors of the Federal Reserve System, May 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11140 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–F

*Commissioner Scroggins did not participate in this proceeding.

Premier Financial Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has 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.

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 May 19, 1995.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Premier Financial Bancorp, Inc., Vanceburg, Kentucky; to engage *denovo* through its subsidiary, Premier Data Services, Inc., Vanceburg, Kentucky, in providing data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation, and operating personnel) and data bases to its existing and subsidiaries and other financial institutions, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11141 Filed 5–4–95; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 534]

National Institute for Occupational Safety and Health; Worker Exposure Assessment and Hazard and Medical Surveillance Programs; Notice of Availability of Funds for Fiscal Year 1995

Introduction

The Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH) announces the availability of fiscal year (FY) 1995 funds for a grant program for worker hazard and medical surveillance projects associated with occupational exposures to radiation and other hazardous agents at nuclear facilities and other energy-related industries. Studies conducted in the nuclear power industry and deliberate exposure of human subjects in radiation experiments are outside the scope of this announcement.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of ''Healthy People 2000,'' a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of ''Healthy People 2000,'' see section ''Where to Obtain Additional Information.'')

Authority

This program is authorized under the Occupational Safety and Health Act of 1970, Section 20(a) and 22(e)(7), [29 U.S.C. 669(a) and 671(e)(7)]. The applicable grant program regulations are in 42 CFR Part 52.

Smoke-Free Workplace

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care,

and early childhood development services are provided to children.

Eligible Applicants

Eligible applicants include domestic non-profit and for-profit organizations, universities, colleges, research institutions, national laboratories, other public and private organizations, including State and local governments, labor unions and other employee representative groups, and small, minority and/or women-owned businesses.

Availability of Funds

Approximately $1.5 million is available in FY 1995 to fund approximately 4 to 6 research project grants (R01). It is expected that the average award will be $300,000, ranging from $200,000 to $400,000 in total costs (direct and indirect costs) per year. It is expected that the awards will begin on or about September 1, 1995, and will be made for a 12-month budget period within a project period of up to 3 years.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Purpose

The efforts funded by these grants will help in the development of model exposure assessment and hazard and medical surveillance programs applicable to both the defense nuclear industry and general occupational settings. NIOSH will support applied field research projects to develop surveillance methodologies and to assess the functional, real-world outcomes of model program(s). Therefore, to assess what components might be needed for a comprehensive model surveillance program (applicable to defense nuclear sites and to occupational settings in general), grantees may review and compare activities at existing pilot surveillance program sites.

Program Interests

1. Job Task Analysis/Exposure Assessment and Hazard Surveillance

Workers should be classified according to risk in medical and epidemiological surveillance programs. An understanding of prospective and retrospective exposures is required to properly classify workers into risk groups. Frequently, the absence of exposure monitoring data on individual workers results in a reliance on surrogate measures of exposure, such as job titles, to estimate risks for groups of workers. Even where exposure monitoring data may be abundant, its interpretation may result in poor estimates of worker risk if the purpose for collecting the data is vague or unknown. Analyses of job titles, building occupancy, and operational procedures and practices have been linked with exposure monitoring data to improve classification methods. The ideal approach for exposure monitoring and other subjective assessment techniques, in support of medical and epidemiologic surveillance programs, has been shown to require accurate characterization of exposures associated with specific job tasks which may then be weighted appropriately for individual workers performing different series of tasks. The outcome from such a strategy is that more valid estimates of exposure are available on groups of workers, resulting in more reliable estimates of risk. However, the disadvantages of such an approach are that it is resource intensive and limited primarily to prospective studies. Therefore, there is a need for research to improve and further develop feasible strategies to assess and record occupational exposures to potentially harmful hazards.

a. *Worker self-monitoring.* Proposals are solicited to look at existing programs, evaluate these existing programs and develop new methods (as appropriate) that could be used to demonstrate reliable worker self-monitoring and subjective exposure assessment techniques. A proposal that identifies the sources of errors when workers self monitor and suggests methods that would minimize those errors would be responsive to this request. The success of ''self-monitoring'' should be analyzed in contrast to classical industrial hygiene/health physics directed monitoring.

b. *Biological exposure indicators.* In many situations biological exposure indicators are useful measures of an individual's exposure. Proposals are solicited to look at existing programs, to evaluate these existing programs and to develop new non-invasive biological exposure indicators (Reference—1994–1995 Threshold Limit Values and Biological Exposure Indices, American Conference of Governmental Industrial Hygienists, 1994.)

c. *Exposure histories.* Exposure history questionnaires depend on the individual's ability to remember details of tasks performed and materials used in past work assignments. More accurate information might be possible if the questionnaires could be better linked to data about hazards and hazardous material and agents used in the facilities. Proposals are solicited to look at existing programs, to evaluate these existing programs and to develop, as appropriate, methods that would aid an individual in more accurately reconstructing exposures to health and injury hazards.

d. *Other proposals.* Proposals are sought to look at existing programs, to evaluate these existing programs and to develop appropriate innovative methods to accurately group employees by exposure so that medical and epidemiologic surveillance programs can be better targeted at occupational health and injury outcomes.

2. Medical Screening

To ensure the highest quality, state-of-the-art occupational health care for workers, it is essential that medical screening examinations be directed toward the detection and treatment of health effects and/or adverse health outcomes from a multitude of exposures in the workplace. For example, at nuclear energy facilities important work-related diseases and injuries include such problems as bladder cancer, beryllium disease, hearing loss, musculoskeletal injuries, heat stress, and radiation effects. Similar diseases and injuries are important to non-defense nuclear facilities having work activities related to hazardous waste operations or where similar exposures might occur.

With this in mind, a ''convincing'' decision logic needs to be developed for what should trigger specific medical screening (and the medical surveillance program components thereof). This decision logic needs to be generic in nature and be developed for the types of potential exposures/diseases such as those of hazardous waste workers and workers conducting decontamination and decommissioning operations. Proposals should demonstrate the familiarity with medical screening, public health surveillance and the general principles of conducting such activities.

Research also needs to be conducted for:

(a) Assessment of existing clinical screening tests and biomarkers related to radiation and non-radiation exposures; and

(b) Development of new clinical screening tests and biomarkers related to selected radiation and non-radiation exposures.

Grant proposals can be submitted as a response to Items 1. and/or 2. as presented above. Within Item 1., proposals can be submitted for one or more of a.-d. In addition, for each project chosen, the proposals should include a component on evaluating the economic benefits of implementing an

improved surveillance program in the selected surveillance area (i.e., the cost benefits of reducing and/or eliminating workplace hazards versus keeping a situation ''status quo'').

Inclusion of Minorities and Women in Study Populations

Applicants are required to give added attention (where feasible and appropriate) to the inclusion of minorities and/or women study populations for research into the etiology of diseases, research in behavioral and social sciences, clinical studies of treatment and treatment outcomes, research on the dynamics of health care and its impact on disease, and appropriate interventions for disease prevention and health promotion. Exceptions would be studies of diseases which exclusively affect males or where involvement of pregnant women may expose the fetus to undue risks. If minorities and/or women are not included in a given study, a clear rationale for their exclusion must be provided.

Evaluation Criteria

1. General

Upon receipt, applications will be reviewed for completeness and responsiveness by NIOSH, CDC. Incomplete applications will be returned to the applicant without further consideration. *If NIOSH, CDC staff find that the application is not responsive to the Request for Assistance (RFA), it will be returned without further consideration.*

The conduct of the research will require that the successful applicant develop and maintain a working relationship with the management and employee representatives at the site(s) selected for study. Letters of support and/or cooperation are needed in the grant application. For more information about these letters, potential applicants should contact the programmatic technical advisor (Dr. Roy Fleming) listed in the subsequent section ''Where to Obtain Additional Information.''

2. Peer Review

Applications that are complete and responsive to the RFA will be evaluated for scientific and technical merit by an appropriate peer review group convened by the NIOSH, CDC, in accordance with the review criteria stated below. As part of the initial peer review, a process (triage) may be used by the initial review group in which applications will be determined to be competitive or non-competitive based on their scientific merit relative to other applications received in response to the RFA. Applications judged to be competitive will be discussed and assigned a priority score. Applications determined to be non-competitive will be withdrawn from further consideration; the Principal Investigator/Program Director and the official signing for the applicant organization will be promptly notified.

Review Criteria

a. Scientific, technical, or medical significance and originality of proposed research;

b. Appropriateness and adequacy of the experimental approach and methodology proposed to carry out the research;

c. Qualifications and research experience of the Principal Investigator and staff, particularly, but not exclusively, in the area of the proposed research;

d. Availability of resources necessary to perform the research; and

e. Adequacy of plans to include both genders and minorities and their subgroups, as appropriate, for the scientific goals of the research. (Plans for the recruitment and retention of subjects will also be evaluated.)

The peer review group also will critically examine the submitted budget and recommend an appropriate budget and period of support for each scored application.

3. Secondary Review

In the secondary (programmatic importance) review, the following factors will be considered:

a. Results of the initial peer review;

b. Magnitude of the problem in terms of numbers of workers affected;

c. Severity of the disease or injury in the worker population; and

d. Usefulness to applied technical knowledge in the identification, evaluation, and/or control of occupational safety and health hazards.

4. Funding Decisions

Applicants will compete for available funds with all other approved applications. The following will be considered in making funding decisions:

a. Quality of the proposed project as determined by peer review;

b. Availability of funds; and

c. Program balance among research areas described in the announcement.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.262.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by the appropriate institutional review committees. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadlines

1. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Branch, CDC (see ''Applications'' for address). It should be postmarked no later than June 5, 1995. The letter should identify the announcement number, name of Principal Investigator, and specify the priority area to be addressed by the proposed project. The letter of intent does not influence review or funding decisions, but it will enable NIOSH/CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

2. Applications

Applicants should use Form PHS–398 (OMB Number 0925–0001) and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the application package. The original and five copies of the application must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305 on or before July 3, 1995.

3. Deadline

A. Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or

2. Sent on or before the deadline date to the above address, and received in time for the review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

B. Applications which do not meet the criteria in 3.A.1. or 3.A.2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and telephone number and will need to refer to Announcement 534. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Georgia L. Jang, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Room 300, Mailstop E13, Atlanta, GA 30305, telephone (404) 842–6796. Programmatic technical assistance may be obtained from Roy M. Fleming, Sc.D., Associate Director for Grants, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, Room 3053, Mail Stop D–30, Atlanta, GA 30333, telephone (404) 639–3343.

Please refer to Announcement 534 when requesting information and submitting an application.

Potential applicants may obtain a copy of ''Healthy People 2000'' (Full Report, Stock No. 017–001–00474–0) or ''Healthy People 2000'' (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800.

Dated: May 1, 1995.

Linda Rosenstock,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

[FR Doc. 95–11139 Filed 5–4–95; 8:45 am]

BILLING CODE 4163–19–P

Food and Drug Administration

[Docket No. 95F–0092]

Amoco Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Amoco Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of ethylene terephthalate-isophthalate copolymers prepared such that the finished copolymers contain 83 to 97 weight percent of polymer units derived from ethylene terephthalate as articles or components of articles in contact with food.

DATES: Written comments on the petitioner's environmental assessment by June 5, 1995.

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

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 5B4455) has been filed by Amoco Corp., 200 East Randolph Dr., Chicago, IL 60601–7125. The petition proposes to amend the food additive regulations in § 177.1630 *Polyethylene phthalate polymers* (21 CFR 177.1630) to provide for the safe use of ethylene terephthalate-isophthalate copolymers prepared such that the finished copolymers contain 83 to 97 weight percent of polymer units derived from ethylene terephthalate, as articles or components of articles in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before June 5, 1995, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 25, 1995.

Alan M. Rulis,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–11061 Filed 5–4–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0156]

Report on Nutrition Labeling Information Study; Raw Fruits, Vegetables, and Fish; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a report entitled ''Food and Drug Administration Nutrition Labeling Information Study, Raw Fruits/Vegetables and Raw Fish.'' This report is intended to summarize survey data on actions taken by food retailers to provide consumers with nutrition labeling information for raw fruits, vegetables, and fish. This report is mandated by the Nutrition Labeling and Education Act of 1990 (the 1990 amendments).

DATES: Comments may be submitted at any time.

ADDRESSES: Submit written comments and requests for single copies of the report to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Comments and requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. Copies of the document will be available at cost from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857. The report and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Mary M. Bender, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St., SW, Washington, DC 20204, 202–205–5592.

SUPPLEMENTARY INFORMATION: The 1990 amendments amended the Federal Food, Drug, and Cosmetic Act (the act) to require, among other things, that under section 403(q)(4) of the act (21 U.S.C. 343 (q)(4)), FDA: (1) Identify the 20 most frequently consumed raw fruits, vegetables, and fish in the United States; (2) establish guidelines for the voluntary nutrition labeling of these raw fruits, vegetables, and fish; and (3) issue regulations that define ''substantial compliance'' with respect to the adherence by food retailers with those guidelines. In the **Federal Register** of July 2, 1991 (56 FR 30458), FDA responded to those requirements by a proposal, and, in the **Federal Register** of November 27, 1991 (56 FR 60880), the agency published a final rule on the nutrition labeling of raw fruits, vegetables, and fish (corrected on March 6, 1992 (57 FR 8174)).

FDA listed the 20 most frequently consumed raw fruits, vegetables, and fish in 21 CFR 101.44. In 21 CFR 101.45, FDA set forth guidelines on nutrition labeling for these foods. Under these guidelines, nutrition labeling information may be provided within the retail departments where raw fruits, vegetables, and fish are sold. Information may be made available in signs, posters, brochures, notebooks, or leaflets and may be supplemented by video, live demonstration, or other media.

In § 101.43 (21 CFR 101.43), FDA defined substantial compliance to mean that at least 60 percent of the food retailers sampled in a representative survey provide nutrition labeling information (as specified in the guidelines) for at least 90 percent of the foods that they sell that are included on the listing of the most frequently consumed raw fruits, vegetables, and fish. FDA said that it would make separate determinations of substantial compliance for raw fruits and vegetables collectively and for raw fish (§ 101.43(a)).

Section 403(q)(4)(C)(ii) of the act states that if substantial compliance is achieved by food retailers, FDA is to reassess voluntary labeling compliance every 2 years. The act also states that if substantial compliance is not achieved, FDA is to propose to require that nutrition information be provided by any person who offers raw fruits and vegetables or raw fish to consumers (section 403(q)(4)(D)(i) of the act).

In the **Federal Register** on May 18, 1993 (58 FR 28985), FDA announced the availability of a report that found that there was substantial compliance under the standard established in § 101.43 by food retailers in the provision of nutrition labeling information for raw fruits, vegetables, and fish. Aggregate percentages (i.e., percentages over all stores sampled) for both raw fruits and vegetables and for raw fish showed that approximately three-fourths of the retail food stores surveyed provided the voluntary nutrition information.

Because substantial compliance was achieved in 1993, section 403(q)(4)(C)(ii) of the act required that FDA reassess voluntary labeling compliance and issue a report in 1995. FDA is now announcing that this reassessment has been done. The results of that reassessment are set forth in the report, ''Food and Drug Administration Nutrition Labeling Information Study, Raw Fruits/Vegetables and Raw Fish.''

Based upon the results of this study that was conducted under contract, FDA once again concludes that substantial compliance by food retailers in providing nutrition labeling information for raw fruits, vegetables, and fish has been met. On a store count basis, three-fourths (75.3 percent for raw produce and 75.4 percent for raw fish) of the sampled stores selling raw fruits, vegetables, and fish provided nutrition labeling information in the departments where the raw foods are sold.

Data were also reported on an all commodity volume (ACV) basis. ACV data are weighted estimates that represent annual store sales volumes and reflect the percent of the market serviced. ACV data approximate more representatively than store counts, the percent of the population exposed to the nutrition labeling information. ACV values were slightly higher than those for sampled store counts.

For raw fruits/vegetables, stores in compliance account for 81.4 percent of the annual sales of all food stores, and for raw fish, stores in compliance account for 76.8 percent of the annual sales of all food stores. These data may be interpreted as evidencing that over three-fourths of U.S. consumers are exposed to nutrition labeling information for raw fruits, vegetables, and fish because they shop in retail food stores that provide the labeling. Because many consumers shop in more than one store, the actual level of consumer exposure is most likely to be even higher.

FDA will again survey retail stores in 1997 to determine whether substantial compliance in the provision of voluntary labeling information for raw fruits, vegetables, and fish continues to exist. If at that time substantial compliance is not met, the agency will propose to modify § 101.43 to make the program mandatory.

Dated: May 1, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–11119 Filed 5–4–95; 8:45 am]

BILLING CODE 4160–01–F

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made final findings of scientific misconduct in the following case:

Terence S. Herman, M.D., Harvard Medical School: The Division of Research Investigations (DRI) of the Office of Research Integrity (ORI) reviewed an investigation conducted by Harvard Medical School into possible scientific misconduct on the part of Dr. Herman while he was an employee of that institution. ORI concurred with the factual findings as set forth in the institution's report, and finds that Dr. Herman committed scientific misconduct by falsely reporting in a published article that research had been conducted according to a stated protocol when, in fact, Dr. Herman knew at the time that the protocol for tumor measurements had not been carried out exactly as described. The research was supported by grant awards from the National Cancer Institute and the National Center for Research Resources, National Institutes of Health.

Dr. Herman accepted the misconduct finding as part of a Voluntary Settlement Agreement under which, for a period of three years, an institution which submits an application for PHS support for a clinical research project on which his participation is proposed or which uses him in any capacity on PHS supported clinical research must concurrently submit a plan for supervision of his duties. The supervisory plan must be designed to ensure the scientific integrity of Dr. Herman's research contribution. Dr. Herman also is prohibited from serving on any Public Health Service advisory committee, board, and/or peer review committee for a period of three years. He has agreed to submit a letter to the *International Journal of Radiation Oncology, Biology, Physics* requesting retraction of that portion of the article dealing with tumor response (Herman, et al., A Phase I–II Trial of Cisplatin, Hyperthermia and Radiation in patients with Locally Advanced Malignancies. *Int. J. Radiation Oncology Biol. Phys.* 17:1273–1278; 1989).

FOR FURTHER INFORMATION CONTACT: Director, Division of Research Investigations, Office of Research Integrity, 301–443–5330.

Lyle W. Bivens,

Director, Office of Research Integrity.

[FR Doc. 95–11118 Filed 5–4–95; 8:45 am]

BILLING CODE 4160–17–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests under review, in compliance with Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the PHS Report Clearance on (202) 690–7100.

The following requests have been submitted for review since the list was last published on April 28.

1. Application for Participation in the National Health Service Corps Scholarship Program—0915–0146—Extension, no change—This request for a two-year extension, no change, of the approval for the application form used by students to apply for scholarship support. During the next year, proposed changes to the application form will be pilot tested. Changes to the form will be submitted for OMB approval late in 1996. Respondents: Individuals or households; Number of Respondents: 5,000; Number of Responses per Respondent: 1; Average Burden per Response: 1 hour; Estimated Annual Burden: 5,000 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave, S.W., Washington, D.C. 20201.

2. Surveillance of Hazardous Substances Emergency Event—0923–0008—Extension, no change—To protect the public's health, ATSDR has established a national surveillance system which describes the impact of hazardous substances emergencies on the public's health. The information is used to examine the distribution of hazardous substance emergencies, describe the type and cause of morbidity and mortality of those affected, and develop strategies to reduce subsequent morbidity and mortality. Respondents: Individuals or households; Number of Respondents: 16; Number of Responses per Respondent: 357; Average Burden per Response: 1 hour: Estimated Annual Burden: 5,593 hours. Send comments to Shannah Koss, Human Resource and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

3. CMHC Construction Grantee Checklist—0930–0104—Revision—To ensure that Community Mental Health Center (CMHC) facilities built with Federal assistance provide mental health services for a 20-year period as required, the Center for Mental Health Services will: (1) survey the universe of CMHC construction grantees actively fulfilling their 20-year service obligation and (2) utilize survey results to determine appropriate follow up, e.g., waivers, recovery activities. Respondents: Not-for-profit institutions; Number of Respondents: 295; Number of Responses per Respondent: 1; Average Burden per Response:. 33 hour; Estimated Annual Burden: 97 hours. Send comments to James Scanlon, Office of the Assistant Secretary for Health, Room 737–F, Humphrey Building, 200 Independence Ave., S.W., Washington, D.C. 20201.

4. Assessment of Work-Related Musculoskeletal Disorders in the Retail Food Industry—New—Work-Related Musculoskeletal Disorders among grocery cashiers have risen drastically since the introduction of the laser scanner. NIOSH investigators and other experts in ergonomics believe that certain checkstand features are more likely to impose substantial biomechanical stresses on cashiers than others. However, little research has been conducted to identify those activities and related postures of checking that contribute to the increased prevalence of WMD in this group of workers. The data collected in this study will be used to develop interventions to reduce WMD among grocery checkers, including redesign of checkstands and development of better training courses. Respondents: Individuals or households; Number of Respondents: 1,000; Number of Responses per Respondent: 1; Average Burden per Response: 1.71 hours; Estimated Annual Burden: 1,710 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

5. National Sample Survey of Registered Nurses VI—New—Current national data on employment and practice of registered nurses are needed to assess the current supply and project the future availability of nurses. This proposed project will provide detailed statistics on the registered nurse population needed to prepare the mandated Secretary's Report to Congress. Respondents: Individuals or households; Number of Respondents: 41,000; Number of Responses per Respondent: 1; Average Burden per Response: .33 hour; Estimated Annual Burden: 13,530 hours. Send comments to Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the individual designated.

Dated: April 27, 1995.

James Scanlon,

Director, Data Policy Staff, Office of the Assistant Secretary for Health and PHS Reports Clearance Officer.

[FR Doc. 95–10910 Filed 5–4–95; 8:45 am]

BILLING CODE 4160–01–M

Substance Abuse and Mental Health Services Administration

Supplemental Awards to Current High Risk Youth Demonstration Program Grantees

AGENCY: Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Correction notice.

SUMMARY: Public notice was given in the **Federal Register** on April 17, 1995, Volume 60, No. 73, pages 19276–19277, of the availability of supplemental funds to demonstrate the differential effectiveness of incorporating an HIV/AIDS prevention curriculum into an on-

going substance abuse prevention program as compared to providing such a curriculum as a stand-alone activity. Applicants eligible to apply for supplements are currently funded grantees under Module A–High Risk Youth, Module B–Female Adolescents, and Module C–Alcohol and Other Drug (AOD) Related Violence Among High Risk Youth of CSAP's Substance Abuse Prevention Demonstration Grant Program for High Risk Populations. The receipt date for applications given in the notice was May 29, 1995. The receipt date for applications has subsequently been changed to June 20, 1995.

CONTACT FOR FURTHER INFORMATION: Ms. Rose Kittrell, Acting Chief, High Risk Youth Branch, Division of Demonstrations for High Risk Populations, CSAP, Rockwall II, 5600 Fishers Lane, Rockville, MD 20857; telephone (310) 443–0353.

Dated: April 28, 1995.

Richard Kopanda,

Acting Executive Offede SAMHSA.

[FR Doc. 95–11120 Filed 5–4–95; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–95–3916]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (7) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 25, 1995.

David S. Cristy,

Acting Director, Information Resources, Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Multifamily Mortgage Insurance Premium Billing Statement and Reconciliation.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms will be used to reconcile the financial records of the mortgagees of their regular or delinquent payments made to HUD for Mortgage Insurance Premiums on Multifamily Housing Projects.

Form Number: HUD–27032A and 27033A.

Respondents: Businesses or Other For-Profit.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–27032A	525	...	12	.....	.05	...	315
HUD–27033A	175	...	12	.....	.03	...	63

Total Estimated Burden Hours: 378.

Status: Extension with changes.

Contact: George Russell, HUD, (202) 708–2022; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: April 25, 1995.

[FR Doc. 95–11091 Filed 5–4–95; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–95–1917; FR–3778–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 5, 1995.

ADDRESSES: For further information, contact David Pollack, Department of Housing and Urban Development, Room 7254, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis,

identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 28, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–11031 Filed 5–4–95; 8:45 am]

BILLING CODE 4210–29–M

Office of Congressional and Intergovernmental Relations

[Docket No. D–95–1090; FR–3912–D–01]

Order of Succession, Acting Assistant Secretary for Congressional and Intergovernmental Relations

AGENCY: Office of the Assistant Secretary for Congressional and Intergovernmental Relations (CIR), HUD.

ACTION: Notice of Order of Succession for the Assistant Secretary for Congressional and Intergovernmental Relations.

SUMMARY: In this notice, the Assistant Secretary for Congressional and Intergovernmental Relations designates the Order of Succession for the position of Assistant Secretary for CIR.

EFFECTIVE DATE: April 28, 1995.

FOR FURTHER INFORMATION CONTACT: Wanda S. Murrell, Administrative Officer, Office of Congressional and Intergovernmental Relations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10148, Washington, DC 20410–1000; telephone (202) 708–0380. [This is not a toll-free number.] A telecommunications device for hearing-impaired persons (TDD) is available at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In this document, the Assistant Secretary for Congressional and Intergovernmental Relations is issuing the Order of Succession of officials authorized to serve as Acting Assistant Secretary for CIR when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for CIR is not available to exercise the powers or perform the duties of the office. Succession to act for and exercise the powers of the Assistant Secretary for CIR pursuant to this order shall be subject to the time limitations specified in the Vacancies Act, 5 U.S.C. 3348.

Accordingly, the Assistant Secretary for CIR designates the following Order of Succession:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Congressional and Intergovernmental Relations is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for CIR, the following are hereby designated to serve as Acting Assistant Secretary for CIR:

(1) Deputy Assistant Secretary for Congressional Relations;

(2) Deputy Assistant Secretary for Intergovernmental Relations.

These officials shall serve as Acting Assistant Secretary for CIR in the order specified herein, and the second-listed official shall not serve unless the first-listed official, whose position title precedes his/hers in this order, is unable to act by reason of absence, disability, or vacancy in office. If the officials designated in this Order of Succession are unable to serve as Acting Assistant Secretary for CIR, by reason of absence, disability, or vacancy in office, officials designated to serve as acting officials for these designated officials shall serve in the same Order of Succession as their principals.

Authorization to serve as Acting Assistant Secretary for CIR shall not exceed the time limitations imposed by the Vacancies Act, 5 U.S.C. 3348.

Authority: Sec. 7(d), Department of Housing and Urban Development Act [42 U.S.C. 3535(d)].

Dated: April 28, 1995.

William J. Gilmartin,

Assistant Secretary for Congressional and Intergovernmental Relations.

[FR Doc. 95–11092 Filed 5–4–95; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis for the Designation of Critical Habitat in States of Washington, Oregon, and California for the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft economic analysis for the proposed designation of critical habitat for the western snowy plover is available for public review. This draft document examines the economic effect of designating 28 areas in the states of Washington, Oregon and California.

DATES: Comments received by May 31, 1995, will be considered in the preparation of the final document.

ADDRESSES: Persons wanting to review the draft economic analysis may obtain a copy from Joel Medlin, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, Room E–1803, Sacramento, CA 95825–1846. Written comments and materials concerning the draft economic analysis for the designation of critical habitat for the western snowy plover should be sent to Joel Medlin, Field Supervisor, at the address above. Written comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen J. Miller, Sacramento Field Office (see **ADDRESSES** section, telephone (916) 979–275, facsimile (916) 979–2723.

SUPPLEMENTARY INFORMATION: The Service listed the coastal population of the western snowy plover (*Charadrius alexandrinus nivosus*) as a threatened species on March 5, 1993 (58 FR 12864). The Service proposed critical habitat for the species on March 2, 1995 (60 FR 11768). The designated areas cover approximately 20,000 acres along 210 miles of coastline in the three states: 19 areas in California, 7 in Oregon, and 2 in Washington. The areas are largely in Federal ownership, but significant areas are state and privately owned land, particularly in California. The draft economic analysis estimates how the designation may affect Federal lands, as well as non-Federal activities authorized or funded by Federal agencies. Activities on private or state-owned lands that do not involve Federal permits, funding or other Federal actions would not be restricted by a designation of critical habitat. Economic effects caused by the listing of the plover as threatened and effects of other related statutes form the baseline from which critical habitat effects are measured. The draft analysis isolates the incremental economic and conservation effects of the critical habitat designation. Economic effects are measured by evaluating factors such as changes in national income, regional jobs, and household income.

Pursuant to section 4(b)(2) of the Endangered Species Act, as amended,

the Secretary of the Interior may exclude an area from critical habitat if it is determined that the economic or other benefits of exclusion outweigh the benefits of designating the area as critical habitat, unless such exclusion would lead to the extinction of the species. The economic analysis assists in making that determination.

Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for the western snowy plover will consider information and recommendations from all interested parties. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning this draft document are solicited. All comments and materials received during the comment period will be considered in preparing the final economic analysis.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq*).

Dated: May 1, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 95–11154 Filed 5–4–95; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Risk Assessment and Management Committee Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Assessment and Management Committee (Committee), a Committee of the Aquatic Nuisance Species Task Force. The Committee meeting will continue development of the draft risk assessment process. The meeting is open to the public. Interested persons may make oral statements to the Committee or may file written statements for consideration.

DATES: The Committee will meet from 9:00 a.m. to 4:30 p.m. on Tuesday, June 13, 1995, and from 9:00 a.m. to 2:00 p.m. on Wednesday, June 14, 1995.

ADDRESSES: The Committee meeting will be held at the National Oceanic Atmospheric Administration—National Marine Fisheries Service, Cooperative Oxford Laboratory, 904 S. Morris Street, Oxford, Maryland, 21654.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, at (301) 734–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Assessment and Management Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (P.L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, Room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Assessment and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., Room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 1, 1995.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director—Fisheries.

[FR Doc. 95–11124 Filed 5–2–95; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Notice of Intent To Repatriate Cultural Items in the Possession of The Maxwell Museum of Anthropology, University of New Mexico

AGENCY: National Park Service, Interior.

ACTION: Notice.

Act of 1990 of the intent to repatriate a cultural item in the possession of The Maxwell Museum of Anthropology, University of New Mexico, Albuquerque New Mexico, that meets the definitions of ''object of cultural patrimony'' and ''sacred object'' under section 2 of the act.

The object is a mask made of red cotton canvas and hide with a leather beak and eye circles, four fertility balls, one pointed appendage on top, and two faint black lines across the face. The mask is thought to date to between 1900 and 1930. The item was acquired by the Museum from Don Woodard of Woodard Trading Post on March 27, 1965 and was given the accession number 65.29.1.

Authorized representatives of the Hopi Tribe acting on behalf of the Katsina Society Priest and a representative of the Katsina Clan of Walpi Village have identified the mask as a Mudhead (Koyemsi Katsina). They have identified the mask as having ongoing importance central to the Hopi tribe as a whole and which could not have been alienated, appropriated, or conveyed by any individual. They have also stated that the living mask is needed by traditional Hopi religious leaders for the practice of traditional Hopi religion by present day adherents. The Hopi tribe requested repatriation of the living mask (Koyemsi Katsina) in a letter dated March 31, 1995.

Based on the above mentioned information, officials of The Maxwell Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between the mudhead mask and the Hopi Tribe. Officials of The Maxwell Museum of Anthropology have also determined that the mudhead mask meets the definition of object of cultural patrimony pursuant to 25 U.S.C. 3001 2.(3)(D). Officials of The Maxwell Museum of Anthropology have also determined that the mudhead mask meets the definition of Sacred Object pursuant to 25 U.S.C. 3001 2.(3)(C).

The Maxwell Museum's Director and Curatorial committee and the University of New Mexico officials have approved the repatriation of the Mudhead Mask to the Hopi Tribe.

This notice has been sent to officials of the Hopi Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Dr. Garth Bawden, Museum Director or Brenda Dorr, NAGPRA Project Director at the Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, New Mexico 87131–1201, telephone: (505) 277–0195, before June 5, 1995. Repatriation of the to the Hopi Tribe can begin after that date if no additional claimants come forward.

Dated: May 2, 1995.

C. Timothy McKeown,

Acting, Departmental Consulting Archeologist.

Acting Chief, Archeological Assistance Division.

[FR Doc. 95–11158 Filed 5–4–95; 8:45 am]

BILLING CODE 4310–70–F

Realty Actions; Sales, Leases, etc.: Georgia

AGENCY: National Park Service, Interior.

ACTION: Notice of Realty Action.

SUMMARY: Proposed Exchange of Federally-Owned Lands for Privately-

Owned Lands Both in Fulton County, Georgia.

FOR FURTHER INFORMATION CONTACT: Superintendent, Martin Luther King, Jr. National Historic Site, 526 Auburn Avenue, Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: Public comments will be accepted for a period of 45 days from the date of this notice.

I. The following described Federally-owned lands which were acquired by the National Park Service, have been determined to be suitable for disposal by means of exchange. The authority for this exchange is the Act of July 15, 1968 (16 U.S.C. 460*l*–22).

These selected Federal lands lie inside the boundary of Martin Luther King, Jr. National Historic Site. The lands include the western half of the former Martin Luther King, Jr. Community Center which the City of Atlanta conveyed via donation to the National Park Service in 1994. The Community Center property was acquired from the City of Atlanta for Service conversion of the eastern half of the building to a Visitor Center for the National Historic Site.

The western half was acquired for the purpose of disposal by exchange with Ebenezer Baptist Church who intends to construct a new sanctuary on the lands using private funds.

The selected lands have been surveyed for cultural resources and endangered and threatened species. Although no known archaeological resources exist on these lands, plans have been made to assess and/or protect archaeological resources should they be discovered during excavation of and construction on the land. The Land Protection Plan, General Management Plan Update and Environmental Assessment discuss the use of this land for exchange purposes, and these reports along with Finding of No Significant Impact are available upon request.

Both the surface and the mineral estates are to be exchanged. There are no leases or permits affecting these lands. The property has been surveyed for hazardous substances and the presence of asbestos and lead paint has been documented.

The lands to be exchanged by the United States are generally described as follows: A portion of the lands at 450 Auburn Avenue, NE., adjacent to Jackson Street.

The above lands contain a total of 1.5 acres, more or less. These lands will be conveyed in fee simple and by easement.

II. In exchange for the lands identified in Paragraph I, the United States of America will acquire land adjacent to Ebenezer Baptist Church and a longer term lease of the existing church sanctuary building. These lands lie within the boundary of Martin Luther King, Jr. National Historic Site.

Acquisition of a long term leasehold in the Church sanctuary building will provide the National Park Service with the authority to conduct visitor interpretive tours and preserve the historic sanctuary where Dr. King served as co-pastor, one of the primary cultural resources of the National Historic Site.

The initial term of the lease shall be 50 years with the National Park Service having the option to extend the lease for an additional 50 years. Ebenezer Baptist Church shall retain the right to use the sanctuary periodically for weddings, funerals, and similar special events. Otherwise, the Service shall use the church for interpretive programs and administer the lands as part of Martin Luther King, Jr. National Historic Site upon completion of the exchange.

The land adjacent to the church to be acquired by the United States of America shall be used to provide parking for handicapped and elderly visitors to the National Historic Site. These lands are being acquired in fee simple with no reservations subject only to rights-of-way and easement of record.

The lands to be acquired and leased by the United States of America are generally described as follows: All or a portion of the lands at 407 Auburn Avenue, NE., and 410–412 Edgewood Avenue.

The above private lands contain 1.1 acres, more or less.

The value of the properties to be exchanged shall be determined by a current fair market value appraisal and if they are not appropriately equal, the values shall be equalized by donation and/or payment of cash as circumstances require.

Detailed information concerning his exchange including precise legal descriptions, Land Protection Plan, General Management Plan Update and Environmental Assessment, cultural reports, and Finding of No Significant Impact are available at the offices of the superintendent, the Martin Luther King, Jr. National Historic Site, 526 Auburn Avenue, NW., Atlanta, Georgia 30312.

For a period of 45 calendar days from the date of this notice, interested parties may submit comments to the above address. Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: April 28, 1995.

Frank Catroppa,

Acting Regional Director, Southeast Region.

[FR Doc. 95–11086 Filed 5–4–95; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Supplemental Environmental Impact Statement

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

ACTION: Notice of Availability of the Draft Supplemental Environmental Impact Statement for the Proposed Mining Plan and Permit Application, Fence Lake Mine.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior is making available for public comment, the Draft Supplemental Environmental Impact Statement (EIS) for the Proposed Mining Plan and Permit Application for the Fence Lake Mine, located in Catron and Cibola Counties, New Mexico, and Apache County, Arizona. The draft supplemental EIS has been prepared to assist OSM in determining the environmental impacts of the life-of-mine mining plan to conduct surface coal mining operations in New Mexico, and the proposed construction and operation of a railroad corridor associated with this mine.

DATES: *Written comments:* OSM will accept written comments on the draft supplemental EIS until 4:00 p.m. Mountain Daylight Time on June 28, 1995.

Public meetings: OSM has scheduled the following public meetings to receive both written and oral comments on the draft supplemental EIS: May 30, 1995, in Quemado, New Mexico, at 7:00 p.m. local time; May 31, 1995, in St. Johns, Arizona, at 7:00 p.m. local time; June 1, 1995, in Gallup, New Mexico, at 7:00 p.m. local time; June 2, 1995, in Grants, New Mexico, at 7:00 p.m. local time; and June 3, 1995, in Albuquerque, New Mexico, at 10:00 a.m. local time.

ADDRESSES: Single copies of the draft supplemental EIS may be obtained by contacting Dr. Robert H. Block at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Written comments: Written comments may be hand delivered or mailed to Dr. Robert H. Block, Western Regional

Coordinating Center, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado, 80202–5733.

Public meetings: The public meetings will be held at the Quemado High School multi-purpose room, Highway 60, Quemado, New Mexico; the St. Johns 4–H Community Center, 395 South First West Street, St. Johns, Arizona; the Best Western Gallup Inn, 3009 West Highway 66, Gallup, New Mexico; the City Council Chambers at City Hall, 600 West Santa Fe Avenue, Grants, New Mexico; and the Pueblo Indian Cultural Center, 2401 12th Street, NW, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Dr. Robert H. Block, Western Regional Coordinating Center, Office of Surface Mining, 1999 Broadway, Suite 3320, Denver, Colorado, 80202–5733; telephone (303) 672–5610.

SUPPLEMENTARY INFORMATION: OSM is making available for public comment, the draft supplemental EIS for the Proposed Mining Plan and Permit Application for the Fence Lake Mine, located in Catron and Cibola Counties, New Mexico, and Apache County, Arizona. The draft supplemental EIS describes the environmental impacts that would result from the life-of-mine mining plan to conduct surface coal mining operations in New Mexico, and the proposed construction and operation of a railroad corridor associated with this mine.

The Salt River Project Agricultural Improvement and Power District (SRP) of Phoenix, Arizona, has applied for Federal and State permits to conduct surface coal-mining and reclamation operations in New Mexico and Arizona as part of its proposed Fence Lake project. This proposed project has two basic elements: (1) The Fence Lake mine and its site facilities and (2) a 44-mile railroad corridor that would be associated with the proposed mine. The mine and its site facilities would be located in Catron and Cibola Counties, New Mexico, approximately 14 miles north of the town of Quemado. SRP proposes to establish a total permitted area of 18,119 acres at Fence Lake; however, only an estimated 8,432 acres, or less than one half of this permit area, would actually be disturbed by the mining operations and support facilities including the railroad corridor. The railroad corridor would be constructed west of the mine—spanning about 31 miles in Catron County, New Mexico, and about 13 miles in Apache County, Arizona—and would extend to the Coronado Generating Station that is located approximately 6 miles northeast of St. Johns, Arizona.

Under the proposed mining plan, SRP would mine a total of 81.3 million tons of coal at Fence Lake. Approximately 35.6 million of those tons would be Federal coal; the remaining 45.7 million tons would be State-leased and privately owned coal. The coal would be transported by railroad 44 miles west of the minesite to be used at SRP's existing Coronado Generating Station. The total mine life would be approximately 50 years—2 years for premining development, 38 years to recover approximately 81.3 million tons of coal and complete reclamation, and 10 years to obtain final bond release.

Dated: May 2, 1995.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 95–11157 Filed 5–4–95; 8:45 am]

BILLING CODE 4310–05–M

AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID)

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of a meeting of the Task Force on Community Colleges on May 26, 1995, from 1:30 to 5 p.m. The Task Force was established by the Board for International Food and Agricultural Development and Economic Cooperation.

The purpose of the meeting is to review the overlapping interest of USAID's strategic objectives with the findings and recommendations of the draft report entitled: ''Seeking a New Partnership: A Report of the Task Force on U.S. Community Colleges.''

This meeting will be held in room 1205 in the Department of State, located at 2201 C Street, NW., Washington, DC. Any interested person may attend and may present oral statements in accordance with procedures established by the Chair and to the extent time available for the meeting permits.

Please call Valerie Price (telephone 703/875–4134) no later than May 10, 1995, if you plan to attend this meeting. She will need your full name, name of employing company or organization, address, phone number and social security number to acquire your pass for entering the Department of State. On the day of the meeting, she will meet you at the diplomatic entrance of the Department of State (2201 C Street, NW., Washington, DC) with your pass.

Those desiring further information may write to Gary W. Bittner in care of USAID, room 608F, SA–18, Washington, DC 20523 or telephone him on (703) 875–4656.

Dated: April 21, 1995.

Emily Vargas-Baron,

Deputy Assistant Administrator, Center for Human Capacity Development.

[FR Doc. 95–11077 Filed 5–4–95; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative Notice to the Commission of Intent To Perform Interstate Transportation for Certain Nonmembers

The following Notice was filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. The rules provide that agricultural cooperatives intending to perform nonmember, nonexempt, interstate transportation must file the Notice, Form BOP–102, with the Commission within 30 days of its annual meeting each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, D.C. 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C.

(1) Western Co-op Transport Association.
(2) P.O. Box 794, Montevideo, MN 56265.
(3) East Highway 212, Montevideo, MN 56265.
(4) Gerald L. Morrow, P.O. Box 794, Montevideo, MN 56265.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11133 Filed 5–4–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32680]

Georgia & Florida Railroad Co., Inc.—Acquisition, Lease, and Operation Exemption—Norfolk Southern Railway Company

Georgia & Florida Railroad Co., Inc. (G&F), a noncarrier, has filed a notice of

exemption to acquire and operate approximately 131.2 miles of rail line currently owned and operated by Norfolk Southern Railway Company (NS) and its subsidiaries, Georgia Southern and Florida Railway Company and Central of Georgia Railroad Company. A description of the involved trackage follows:

G&F will purchase and operate: (1) A rail line extending between milepost 23.25 at Ganor and milepost 33.6 at Schley Junction, near Moultrie, and between milepost 29.52 at Norman Junction, near Moultrie, and milepost 33.52 at Moultrie, a total distance of 14.35 miles, in Colquitt County, GA (the ''Moultrie lines''); (2) a rail line extending between milepost 30.65 at Valdosta, in Lowndes County, GA, and milepost 57.2, at Nashville, in Berrien County, GA, a distance of 26.55 miles (the ''Valdosta-Nashville line''); and (3) a rail line extending between milepost 93.0 and milepost 95.3, within Camilla, in Mitchell County, GA, a distance of 2.3 miles (the ''Camilla line'').

G&F will also lease from NS and operate a rail line extending between GN 0.7 at Albany, in Dougherty County, GA, and milepost GN 58.9 at Sparks, in Cook County, GA, a distance of approximately 58.2 miles (the ''Sparks line'').

Finally, NS will grant to G&F incidental overhead trackage rights extending between milepost 125.2 at Sparks, Cook County, GA, and milepost 155.0 at Valdosta, in Lowndes County, GA, a distance of approximately 29.8 miles (the ''Sparks-Valdosta line'').

This transaction is related to the petition for exemption concurrently filed in Finance Docket No. 32681, *H. Peter Claussen and Linda C. Claussen—Continuance-In-Control Exemption—Georgia & Florida Railroad Co., Inc.*, in which the Claussens seek to continue in control of G&F upon its becoming a class III rail carrier.[1] The proposed transaction was expected to be consummated on or after April 13, 1995.

Any comments must be filed with the Commission and served on: Mark H. Sidman, Weiner, Brodsky, Sidman & Kider, 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 26, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11134 Filed 5–4–95; 8:45 am]

BILLING CODE 7035–01–P

[1] H. Peter Claussen and Linda C. Claussen (the Claussens) currently control through management and stock ownership, the following rail common carriers: (1) Albany Bridge Company, Inc. (ABC); (2) Gulf and Ohio Railways, Inc. (which operates the Mississippi Delta Railroad and the Atlantic & Gulf Railroad) (A&GR); (3) Wiregrass Central Railroad Company, Inc.; (4) H & S Railroad Company, Inc.; (5) Piedmont & Atlantic Railroad Co., Inc.; and (6) Rocky Mount & Western Railroad Co., Inc. The Claussens, the controlling stockholders of G&F, do not qualify for a class exemption under 49 CFR 1180.2(d)(2) because the ''Sparks line'' connects with ABC and A&GR at Albany, GA, and the ''Camilla line'' connects with A&GR at Camilla, GA. In order to insulate themselves from unauthorized control during the pendency of the continuance in control proceeding, the Claussens have placed all of their shares of stock in an independent voting trust.

[Docket No. AB–440X]

Wisconsin & Michigan Railway Company—Discontinuance of Service Exemption—in Ashland and Iron Counties, WI and Gogebic County, MI

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts Wisconsin & Michigan Railway Company (WIMI) from the prior approval requirements of 49 U.S.C. 10903–10904 to discontinue service over 32.38 miles of Wisconsin Central, Ltd. rail line known as the Mellen-Bessemer Branch, extending between milepost 411.0 near Mellen, WI and milepost 443.38 near Bessemer, MI, in Ashland and Iron Counties, WI and Gogebic County, MI.

DATES: Provided no formal expression of intent to file a financial assistance offer has been received, this exemption will be effective on June 4, 1995. Formal expressions of intent to file financial assistance offers[1] under 49 CFR 1152.27(c)(2) must be filed by June 15, 1995. Petitions to stay must be filed by May 22, 1995. Petitions to reopen must be filed by May 30, 1995.

ADDRESSES: Send pleadings referring to Docket No. AB–440X to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representative: Thomas F. McFarland, Jr., 20 North Wacker Drive, Suite 3118, Chicago, IL 60606–3101.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Decided: April 20, 1995.

By the Commission, Chairman Morgan, and Commissioners Simmons, McDonald, and Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 95–11135 Filed 5–4–95; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C. 2d 164 (1987).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1718–95]

Employment-Based Direct Mail Program for the Texas Service Center; and Clarification of all Service Center Names

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice will inform the public that, as of October 1, 1994, Immigration and Naturalization (INS) service centers are identified by state location, i.e., Texas Service Center. This does not affect their multi-state jurisdiction. This notice also implements a trial program for filing of employment-based immigrant and non-immigrant petitions at the Texas Service Center. Currently all such cases are filed at the service centers located in Vermont, Nebraska and California. Under the trial program, employment-based petitions may be mailed directly to the Texas Service Center during the specified period, from May 5, 1995, through November 6, 1995. This trial Program is being set up as a way of analyzing the Service Center's processes relating to employment-based petitions. If, after the 6-month period, the trial program is deemed successful, the Texas Service Center will have exclusive jurisdiction over all employment-based petitions, except those related to major league baseball, the National Hockey League, and the

North American Free Trade Agreement (NAFTA), filed by petitioners in states listed under the jurisdiction of the Texas Service Center.

DATES: May 5, 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 No. 1718–95 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Jack Hartsoch, Staff Officer, Immigration and Naturalization Service, Service Center Operations (HQSCO), Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–3156, fax (202) 514–3156; or James M. Burns, Assistant Center Director-Examinations, Immigration and Naturalization Service, Texas Service Center, Dept. A, P.O. Box 152122, Irving, TX 75015–2122, telephone (214) 767–7288.

SUPPLEMENTARY INFORMATION:

Background

Since the inception of the service centers, several names have been attributed to them. Examples are: Regional Adjudication Center, Regional Service Center, (regional label such as) Southern Service Center, etc. This notice seeks to clarify the references to all service centers, and to conform to the Service's reorganization. Also, the INS is testing the direct mail of employment-based petitions at the Texas Service Center for a 6-month period to determine whether to expand the processing of these cases on a permanent basis.

Service center names: Service centers will henceforth be identified by the state in which they are located. The use of the state name as an identifier to distinguish between the four centers does not affect their multi-state jurisdiction. The following is a current listing of the service centers.

Vermont Service Center
Texas Service Center
Nebraska Service Center
California Service Center

Conversion to direct mail at the Texas Service Center: The INS intends to expand its Direct Mail Program in the near future to allow more types of applications and petitions to be filed directly with service centers. By expanding the authority to file employment-based petitions at all four service centers, the Service would achieve greater uniformity and coordination in the adjudication processes. During the 6-month trial period, beginning the date this notice is published, in addition to those petitions and applications currently being filed with the Texas Service Center, the following employment-based petitions, except for those relating to major league baseball, the National Hockey League, and the North American Free Trade Agreement (NAFTA), may be filed at that Service Center:

1. Form I–129, Petition for a Nonimmigrant Worker.
2. Form I–140, Immigrant Petition for Alien Worker.
3. Form I–526, Immigrant Petition by Alien Entrepreneur.
4. Form I–829, Petition by Entrepreneur to Remove the Conditions.

The trial program is only available to those commercial enterprises whose work, training, or location is in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Caroline, Tennessee, or Texas.

This trial program is optional for those specified above, and pertains only to the 4 above-stated types of petitions. During the trial period, a petitioner also has the option to file the above-stated types of petitions with the service center currently having jurisdiction. If a petitioner files a petition with the Texas Service Center, however, the petitioner may not file an identical petition for the same beneficiary with another service center or office of the INS.

The mailing address of the Texas Service Center is: Texas Service Center, Dept. A, P.O. Box 152122, Irving, TX 75015–2122.

Dated: April 25, 1995.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 95–11073 Filed 5–4–95; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from, other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended by 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the pubic interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data maybe obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 28th day of April 1995.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 95–10896 Filed 5–4–95; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

National Survey of Unemployment Insurance

AGENCY: Office of the Secretary, Labor.

SUMMARY: The Director, Office of Information Resources Management Policy, invites comments on the following proposed expedited review information collection request as required by the Paperwork Reduction Act of 1980, as amended.

DATES: This expedited review is being 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 June 1, 1995.

ADDRESSES: Written comments should be addressed to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, 725 17th St., NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Kenneth A. Mills, Department of Labor, 200 Constitution Ave., NW Room N–1301, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Mills, (202) 219–5095. Individuals who use a telecommunications device for the deaf (TTY/TDY) may call (202) 219–4720 between 1:00 p.m. and 4:00 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 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 the agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management Policy, publishes this notice simultaneously with the submission of this request to OMB. This notice contains the following information:

Type of Review: Expedited.

Title: National Survey of Unemployment Insurance.

Frequency of Response: One-time.

Affected Public: Individuals or households.

Number of Respondents: 1,200.

Estimated Time Per Response: 12 minutes.

Total Annual Burden Hours: 240.

Respondents Obligation to Reply: Voluntary.

Description: In November 1991, the Congress of the United States passed the Emergency Unemployment Compensation Act. In accordance with the Act, Congress created the Advisory Council on Unemployment Compensation (ACUC). The ACUC's primary responsibility is to evaluate the unemployment compensation program, including the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and any other aspects of the program, and to make recommendations for improvement.

In carrying out its mandate to evaluate and analyze the unemployment insurance system the ACUC has determined that it is very important to assess public opinion and public knowledge regarding the performance, fairness, coverage, adequacy, and satisfaction of the unemployment system currently in place. A telephone survey of a random sample of adults 18 years and older will be conducted.

Signed at Washington, D.C. this 1st day of May 1995.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 95–11150 Filed 5–4–95; 8:45 am]

BILLING CODE 4510–30–M

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under Section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on May 25 and 26 in C–5515 Seminar Room 1 A&B at the Department of Labor, 200 Constitution Avenue, NW., Washington, DC. The meeting on Thursday, May 25, 1995, will be from approximately 9:00 a.m. to 4:00 p.m., and on Friday, May 26, 1995 will be from approximately 8:30 a.m. to Noon.

Written comments are welcome and may be submitted by addressing them to: Mr. Thomas S. Keefe, Special

Assistant, Office of the Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S1316, Washington, DC. 20210.

The primary items on the agenda are:

- Adoption of minutes of previous meeting.
- DOL to report on veterans status for employment.
- DOL and GAO to report on the duplication of services across agencies in the hope of establishing collaborative efforts.
- ESA of DOL to provide a briefing on OFCCP.
- A legislative update on veterans programs.
- Task Force Reports (if any).
- Any other business.

Persons with disabilities, needing special accommodations, should contact Thomas S. Keefe at telephone number 202–219–9116 no later than Friday, May 19, 1995.

Signed at Washington, DC this 1st day of May, 1995.

Preston M. Taylor Jr.,

Assistant Secretary for Veterans' Employment and Training.

[FR Doc. 95–11151 Filed 5–4–95; 8:45 am]

BILLING CODE 4510–79–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 95–030]

Intent To Grant a Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA intends to grant Test Max Systems n Service, Corporation of Singapore, having its headquarters in Singapore, an exclusive, royalty-bearing, revocable license to practice (1) U.S. Patent No. 4,266,177, entitled Power Control Factor System for A.C. Induction Motors; (2) U.S. Patent No. 4,404,511, entitled Motor Power Factor Controller with a Reduced Voltage Starter; (3) U.S. Patent No. 4,417,190, entitled Control System for an Induction Motor with Energy Recover; (4) U.S. Patent No. 4,426,614, entitled Pulsed Thyristor Trigger Control Circuit Continued; (5) U.S. Patent No. 4,433,276, entitled Three-Phase Power Factor Controller; (6) U.S. Patent No. 4,439,718, entitled Motor Power Control Circuit for A.C. Induction Motors; (7) U.S. Patent No. 4,459,528, entitled Phase Detector for Three-Phase Power Factor Controller; and (8) U.S. Patent No. 4,469,998, entitled Three-Phase Power Factor Controller with Individual EMF Sensing. These patents pertain to the reduction of energy consumption for electric motors. The patent license will be for a limited number of years and will contain appropriate terms and conditions in accordance with the Department of Commerce Licensing Regulations, 37 CFR 404.1 *et seq.* NASA will grant the patent license in accordance with these licensing regulations unless the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation, within 60 days of the date of this notice. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Written objections to this proposed license grant must be received by July 5, 1995.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, NASA, Director of Patent Licensing at (202) 358–2041.

Dated: April 28, 1995.

Edward A. Frankle,

General Counsel.

[FR Doc. 95–11127 Filed 5–4–95; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (1754).

Date and Time: May 23–25, 1995, 8:30 am–4:00 pm.

Place: NSF, 4201 Wilson Boulevard, Arlington, VA, Rm. 370.

Type of Meeting: Closed.

Contact Person: Drs. John Cross and Arthur Kowalsky, Program Directors, Biological Instrumentation and Instrument Development, Division of Biological Instrumentation & Resources, NSF, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1472.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate biochemical/environmental proposals and structural/computational biology proposals for the Academic Research Infrastructure (ARI) program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11094 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: May 21–22, 1995, 8:15 a.m. to 5 p.m.

Place: National Science Foundation, Room 380, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1370.

Type of Meeting: Closed.

Contact Person: Dr. M.C. Roco, Program Director, Fluid, Particulate, & Hydraulic Systems, CTS, Room 525, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the NSF Research Equipment Grants proposals as part of the selection process for awards.

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11095 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross Disciplinary Activities

Date and Time: May 22, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room(s) 360, 365 and 370.

Type of Meeting: Closed.

Contact Person(s): John C. Cherniavsky, Head and Tuz C. Ting, Program Director CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone: (703) 306–1980.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Academic Research Infrastructure proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11097 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Adivsory Panel for Economics, Decision and Management Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Economics, Decision and Management Sciences (#1759)

Date and Time: May 22 and 23, 1995—8:30 a.m. until 5:00 p.m.

Place: Room 970, NSF, 4201 Wilson Boulevard, Arlington, VA 22230

Type of Meeting: Closed.

Contact Person: Dr. Daniel H. Newlon, Program Director for Economics, Division of Social, Behavioral and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone (703) 306–1753

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Human Capital Initiative proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11098 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (#1196)

Date and Time: May 23, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room 360, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Paul Werbos, Program Director Neuroengineering, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Academic Research Infrastructure (ARI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552b.(c) (4) and (6) the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11099 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Advisory Committee for Education and Human Resources (#1119)

Date and Time: May 24–25, 1995; 8:30 am–5:30 pm

Place: Room 320, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: William McHenry, Program Director, Alliance for Minority Participation (AMP), Human Resource Development (HRD), Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1633.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the AMP Program

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11100 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information, Robotics and Intelligent Systems (1200).

Date and Time: May 26, 1995, 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 1150.

Type of Meeting: Closed.

Contact Person: Dr. Howard Moraff, Acting Deputy Division Director, Robotics and Intelligence, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1928.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Interactive Systems Program proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11101 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meetings:

Name: Special Emphasis Panel in Materials Research (DMR).

Dates and Times: May 24, 1995—8:00 pm–10:00 pm; May 25, 1995—8:30 am–5:00 pm; May 26, 1995—8:30 am–5:00 pm.

Place: PSL Large Conference Room, Synchrotron Radiation Center Stoughton, Wisconsin.

Type of Meetings: Closed.

Contact Person: Dr. Loretta J. Inglehart, Program Director, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1817.

Purpose of Meetings: To provide advice and recommendations concerning support for the Synchrotron Radiation Center, University of Wisconsin proposal.

Agenda: Evaluation of proposal.

Reason for Closing: The proposal being reviewed may include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11102 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: May 22, 1995, 8:30 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 330, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Civil and Mechanical Systems NSF IIA proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11103 Filed 5–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (#1207).

Date and Time: May 25, 1995, 8:30 am to 5:00 pm.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Mr. Douglas Gatchell, NCRI, National Science Foundation, Room 1175, Arlington, VA 22230 (703–306–1949).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted for NSFNET Connections Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11104 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (#1208).

Date: May 22–24, 1995.

Place: Bridge Annex, California Institute of Technology, 1201 E. California Boulevard, Pasadena, California.

Type of Meeting: Closed.

Contact Person: Dr. David Berley, Project Manager, Laser Interferometer Gravitational Observatory, Physics Division, Room 1015, National Science Foundation, 4201 Arlington Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review, assess and advise NSF on the Laser Interferometer Gravitational Wave Observatory (LIGO) project. The principal topic of this review is the recently completed management control system developed for the LIGO project.

Agenda: To review, and assess the management control system, and to obtain an overview of other management topics and technical aspects of the project.

Reason for Closing: The Project plans being reviewed include information of a proprietary or confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11105 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name Advisory Committee for Biological Sciences; Committee of Visitors.

Date and Time: Monday, May 22 through Tuesday, May 23, 1995; 8:30 a.m. to 5:00 p.m.

Place: The National Science Foundation, Rooms 310 and 320, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. James H. Brown, Division Director for Biological Instrumentation and Resources, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230. Telephone: 703–306–1470.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Special Projects Programs in the Division of Biological Instrumentation and Resources.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

M. Rebecca Winkler,

Committee Management Officer.

Dated: May 1, 1995.

[FR Doc. 95–11093 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemical and Transport Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemical and Transport Systems (#1190).

Date and Time: May 25, 1995; 8:00 a.m. to 1:30 p.m.

Place: Xerox Conference Center, Leesburg, VA.

Type of Meeting: Closed.

Contact Person: Dr. John R. Howell, Program Director, Thermal Transport and Thermal Processing, (703) 306–1371.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the NSF Faculty Early Career Development (CAREER) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 1, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–11096 Filed 5–4–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (the licensee) for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

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 partial exemption and a schedular exemption from the requirements of Section III.D.1.(a) of 10 CFR Part 50, Appendix J would be granted. This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of September 28, 1994, as supplemented on February 24, 1995.

The Need for the Proposed Action

The proposed action is needed to permit the licensee to perform the third Type A test for the first 10-year Appendix J service period during the sixth refueling outage, instead of the fifth refueling outage. The exemption would permit a more flexible schedule for containment leakage testing and resulting in a significant cost savings to the licensee. The fifth refueling outage began in April 1995, and the sixth refueling outage will be in 1997. Therefore, the exemption would (1) permit the third and last Type A tests of the 10-year inservice inspection period to not correspond with the end of the current American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) inservice inspection interval, and (2) to extend the 10 year Appendix J Type A test interval to refueling outage 6, currently scheduled for April 1997, which would be an extension of 12 months.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed partial exemption and schedular exemption would not increase the probability or consequences of accidents previously analyzed and the proposed partial and schedular exemptions would not affect facility radiation levels or facility radiological effluents. The licensee states that the existing Type B and C testing programs are not being modified by this request and will continue to effectively detect containment leakage caused by the degradation of active containment isolation components as well as containment penetrations. It has been the consistent and uniform experience at the facility during the two Type A tests conducted on July 5, 1989 and October 12, 1993, that any significant containment leakage paths are detected by the Type B and C testing. The Type A test results have only been confirmatory of the results of the Type B and C test results. Therefore, application of the regulation in this particular circumstance would not serve, nor is it necessary to achieve, the underlying purpose of the rule. The licensee has stated to the NRC Project Manager that the general containment inspection will be performed during refueling outage 5 although it is only required by Appendix J (Section V.A) to be performed in conjunction with Type A tests.

The NRC staff considers that these inspections, though limited in scope, provide an important added level of confidence in the continued integrity of the containment boundary.

The proposed 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 no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

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.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit No. 3.

Agencies and Persons Consulted

In accordance with its stated policy, on March 24, 1995, the staff consulted with the Connecticut State official, Mr. Kevin McCarthy, Department of Environmental Protection, 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 action.

For further details with respect to the proposed action, see the licensee's letter dated September 28, 1994, as supplemented by letter dated February 24, 1995, which 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 located at the Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Dated at Rockville, Maryland, this 28th day of April 1995.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Director, Project Director I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 95–11137 Filed 5–4–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Expedited Review of Revised Form SF 2823

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for expedited review of a revised information collection. Standard Form SF 2823, Designation of Beneficiary—FEGLI, is used by any Federal employee or annuitant covered by the Federal Employees' Group Life Insurance Program to instruct the Office of Federal Employees' Group Life Insurance how to distribute the proceeds of his/her life insurance when the statutory order of precedence does not meet his/her needs.

Approximately 1,000 SF 2823 forms are completed annually. It takes approximately 15 minutes to complete, for a total public burden of 250 hours.

A copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received on or before May 8, 1995. OMB has been requested to take action on or before May 10, 1995.

ADDRESSES: Send or deliver comments to—

Kenneth H. Glass, Chief, Insurance Operations Division, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Management Services Division, (202) 606–4025.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

BILLING CODE 6325–01–M

FEGLI
Federal Employees Group Life Insurance

Designation of Beneficiary

Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136

Warning
Read instructions on back of duplicate before filling in this form

Information Concerning The Insured: If you have not assigned your insurance, YOU are "the Insured", as used throughout this form.

Name of Insured *(Last, first, middle)*	Date of birth of Insured *(Month, day, year)*	Social Security number of Insured

The Insured is: *Place an "X" in the appropriate box.*	☐ An employee	☐ Retired or an applicant for retirement	☐ Receiving OWCP benefits or an applicant for OWCP benefits	If the Insured is retired or receiving Federal Employees' Compensation, give "CSA", "CSI", or OWCP claim number.

Department or agency in which the Insured is presently employed *(If retired, former department or agency):*

Department or agency	*Bureau*	*Division*	*Location (City, state and ZIP code)*

I am canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program and am now designating the beneficiary or beneficiaries named below to receive any amount of **Life Insurance** and **Accidental Death Insurance** due and payable at the Insured's death.

I understand that if I have previously validly assigned my insurance, any designation completed by me is not valid and has no force and effect.

I understand that this Designation of Beneficiary, if valid, will remain in full force and effect, unless or until canceled by me in writing, or until such time as it is automatically canceled (see back of Part 2). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed under the order of precedence, or, if the insurance has been assigned, to the assignee(s).

Information Concerning The Beneficiary or Beneficiaries (See examples of designations on reverse side):

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary

Statement of Insured or Assignee

Print or type **your** name and address *(Including ZIP code)*	Please check: I: ☐ have ☐ have not elected Living Benefits.	Check only one: I am: ☐ the Insured ☐ an Assignee	Please check: ☐ I have **not** assigned my insurance. ☐ I have signed this form in the presence of the **two** witnesses who have signed below. ☐ Neither witness is named as a beneficiary. ☐ If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. *(Dollar amounts are not acceptable.)*

For each type of insurance (Basic Life, Option A-Standard, and Option B-Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor.

(2) I understand that if none of the designated beneficiaries is living at the time of the Insured's death, the proceeds will be distributed under the order of precedence, or, if the insurance has been assigned, to the assignee(s).

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary(ies).

Signature of Insured/Assignee *(Only the Insured/Assignee may sign. Signatures by guardians, conservators or through a power of attorney are not acceptable.)*	Date of execution *(Month, day, year)*

Witnesses To Signature (A witness is not eligible to receive payment as a beneficiary):

Signature of witness	Number and street	City, state and ZIP code
Signature of witness	Number and street	City, state and ZIP code

Receiving agency	Date of receipt	Signature of authorized agency official	Title

See back of Part 2 for instructions on where to file this form. Do not file with the Office of Federal Employees' Group Life Insurance.

PART 1-Original

Important - the filing of this form, if valid, will completely cancel any Designation of Beneficiary you may have previously filed under the Federal Employees' Group Life Insurance Program. Be sure to name in this form all persons you wish to designate as beneficiaries of any life insurance payable under the Program.

Examples of Designations

1. How to designate one beneficiary Do not write names as M.E. Brown or as Mrs. John H. Brown. If you want to designate your estate as beneficiary, enter "My estate" in the beneficiary column.

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary
Mary E. Brown	214 Central Avenue Muncie, IN 47303	Niece	100%

2. How to designate more than one beneficiary Be sure that the shares to be paid to the several beneficiaries add up to 100 percent.

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary
Alice M. Long	509 Canal Street Red Bank, NJ 07701	Aunt	25%
Joseph P. Brady	360 Williams Street Red Bank, NJ 07701	Nephew	25%
Catherine L. Rowe	792 Broadway Whiting, IN 46394	Mother	50%

3. How to designate a contingent beneficiary

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary
John M. Parrish, if living	810 West 180th Street New York, NY 10033	Father	100%
Otherwise to: Susan A. Parrish	810 West 180th Street New York, NY 10033	Sister	100%

4. How to designate different beneficiaries for basic life and optional coverages*

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary
John D. Jones	124 Elm Street Dayton, OH 45420	Son	100% Basic Life
Jane M. Smith	421 Spring Avenue Portland, ME 04101	Niece	100% Opt. A-Standard
Elizabeth J. Allen	234 Fifth Avenue New York, NY 10029	Daughter	50% Opt. B-Additional
Ann J. Borden	678 Ninth Street Philadelphia, PA 19123	Daughter	50% Opt. B-Additional

5. How to cancel a designation of beneficiary and effect payment under the order of precedence *(See back of Part 2)*

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary
Cancel prior designations			

* If a beneficiary for Basic Life, Option A-Standard, or Option B-Additional predeceases the insured, and there is no surviving beneficiary or contingent beneficiary for that type of insurance, payment for that type of insurance will be made under the order of precedence or, if the insurance has been assigned, to the assignee(s) *(See back of Part 2)*.

FEGLI
Federal Employees Group Life Insurance

Designation of Beneficiary

Federal Employees' Group Life Insurance Program

Form Approved
OMB No. 3206-0136

Warning
Read instructions on back of duplicate before filling in this form

Information Concerning The Insured: If you have not assigned your insurance, YOU are "the Insured", as used throughout this form.

Name of Insured *(Last, first, middle)*	Date of birth of Insured *(Month, day, year)*	Social Security number of Insured

The Insured is: *Place an "X" in the appropriate box.*	☐ An employee	☐ Retired or an applicant for retirement	☐ Receiving OWCP benefits or an applicant for OWCP benefits	If the Insured is retired or receiving Federal Employees' Compensation, give "CSA", "CSI", or OWCP claim number.

Department or agency in which the Insured is presently employed *(If retired, former department or agency):*

Department or agency	*Bureau*	*Division*	*Location (City, state and ZIP code)*

I am canceling any and all previous Designations of Beneficiary under the Federal Employees' Group Life Insurance Program and am now designating the beneficiary or beneficiaries named below to receive any amount of **Life Insurance** and **Accidental Death Insurance** due and payable at the Insured's death.

I understand that if I have previously validly assigned my insurance, any designation completed by me is not valid and has no force and effect.

I understand that this Designation of Beneficiary, if valid, will remain in full force and effect, unless or until canceled by me in writing, or until such time as it is automatically canceled (see back of Part 2). If this designation form is determined invalid for any reason, the next prior valid designation form will be given full force and effect. If no such prior form exists, the proceeds will be distributed under the order of precedence, or, if the insurance has been assigned, to the assignee(s).

Information Concerning The Beneficiary or Beneficiaries (See examples of designations on reverse side):

Type or print first name, middle initial, and last name of each beneficiary	Type or print address *(Including ZIP code)* of each beneficiary	Relationship	Percent or fraction to be paid to each beneficiary

Statement of Insured or Assignee

Print or type **your** name and address *(Including ZIP code)*	Please check: I: ☐ have ☐ have not elected Living Benefits.	Check only one: I am: ☐ the Insured ☐ an Assignee	Please check: ☐ I have **not** assigned my insurance. ☐ I have signed this form in the presence of the **two** witnesses who have signed below. ☐ Neither witness is named as a beneficiary. ☐ If I designated shares to be paid to more than one beneficiary, the shares add up to 100%. *(Dollar amounts are not acceptable.)*

For each type of insurance (Basic Life, Option A-Standard, and Option B-Additional): (1) I hereby direct, unless otherwise indicated above, that if more than one beneficiary is named, the share of any beneficiary who may predecease me or become disqualified for any reason from receiving a share of the benefits shall be distributed equally among the surviving beneficiaries, or entirely to the survivor.

(2) I understand that if none of the designated beneficiaries is living at the time of the Insured's death, the proceeds will be distributed under the order of precedence, or, if the insurance has been assigned, to the assignee(s).

I hereby specifically reserve the right to cancel or change this designation of beneficiary at any time without knowledge or consent of the beneficiary(ies).

Signature of Insured/Assignee *(Only the Insured/Assignee may sign. Signatures by guardians, conservators or through a power of attorney are not acceptable.)*	Date of execution *(Month, day, year)*

Witnesses To Signature (A witness is not eligible to receive payment as a beneficiary):

Signature of witness	Number and street	City, state and ZIP code
Signature of witness	Number and street	City, state and ZIP code

Receiving agency	Date of receipt	Signature of authorized agency official	Title

See back of Part 2 for instructions on where to file this form. Do not file with the Office of Federal Employees' Group Life Insurance.

PART 2-Duplicate

U.S. Office of Personnel Management NSN 7540-01-231-6228
The FEGLI Handbook for Personnel and Payroll Offices

5

2823-102 Previous editions not usable

Standard Form 2823
Rev. March 1995

This Designation of Beneficiary Form is to be used solely for the disposition of proceeds of insurance under the Federal Employees' Group Life Insurance Program and is not to be confused with Standard Form 2808, *Designation of Beneficiary, Civil Service Retirement System,* Standard Form 3102, *Designation of Beneficiary, Federal Employees' Retirement System,* Standard Form 1152, *Designation of Beneficiary, Unpaid Compensation of Deceased Civilian Employee,* or RI 76-10, *Assignment of Federal Employees' Group Life Insurance.*

If you have not assigned your insurance, YOU are "the insured", as used throughout this form.

Order of Precedence

If the insurance HAS BEEN assigned and there is no valid Designation of Beneficiary, the amount of group life insurance and group accidental death insurance in force at the date of the Insured's death shall be paid to the assignee(s).

If the insurance HAS NOT BEEN assigned and there is no valid Designation of Beneficiary, the amount of group life insurance and group accidental death insurance in force at the date of death shall be paid to the person or persons surviving at the date of death, under the following order of precedence:

1. To the widow or widower.
2. If none of the above, to the child or children, with the share of any deceased child distributed among the descendants of that child.
3. If none of the above, to the parents in equal shares or the entire amount to the surviving parent.
4. If none of the above, to the duly appointed executor or administrator of the estate.
5. If none of the above, to the other next of kin who are entitled under the laws of the domicile of the Insured at the date of death.

It is not necessary to designate a beneficiary unless you wish payment to be made in a way other than the order of precedence shown above.

Regulations

(a) The Designation of Beneficiary shall be in writing, signed and witnessed, in writing, by two people, and received in the employing office (or in the Office of Personnel Management, in the case of (1) a retired employee or (2) an employee whose insurance is continued while receiving benefits under the Federal Employees' Compensation Law because of disease or injury and who is held by the Department of Labor to be unable to return to duty) prior to the death of the Insured.

(b) A change or cancellation of beneficiary in a last will or testament, or in any other document not witnessed and filed as required by these regulations, shall not have any force or effect.

(c) A witness to a Designation of Beneficiary is not eligible to receive payment as a beneficiary.

(d) Any person, firm, corporation or legal entity (except an agency of the Federal or District of Columbia governments) may be named as beneficiary.

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

(f) A Designation of Beneficiary is automatically canceled 31 days after the employee stops being insured.

(g) If a valid Designation of Beneficiary provides that a designated beneficiary shall be entitled to the proceeds of the insurance only if the beneficiary survives the Insured for a period of time (not more than 30 days) as specified by the designator, no right to the insurance shall vest as to such beneficiary during that period. In the event such beneficiary does not survive the specified period, payment of the proceeds of the insurance will be made as if the beneficiary had predeceased the Insured.

Instructions

1. If you have validly assigned your insurance (that is, you completed an RI 76-10 Assignment form) either as an employee or as an annuitant or as an assignee reassigning insurance, **your Designation of Beneficiary is invalid.** Only the assignee(s) may complete a Designation.
2. Only the Insured or Assignee may sign the Designation of Beneficiary. The signature of a guardian, conservator or other fiduciary (including, but not limited to, those acting pursuant to a Power of Attorney or a Durable Power of Attorney) **is not acceptable.**
3. The examples printed on the back of the first page of this form may be helpful to you in filling out this form to name a beneficiary or to cancel a prior Designation of Beneficiary. More than one beneficiary can be designated. Unless you direct otherwise in the Designation, the person(s) named will be considered as beneficiary (or beneficiaries) for *(both)* Basic Life and optional coverages. The total insurance can be divided by showing what share is to be paid to each beneficiary (example 2), or different beneficiaries may be designated for Basic Life and optional coverages (example 4).
4. If you have elected a full Living Benefit, any designation of Basic insurance cannot be honored--you no longer have any Basic to designate.
5. Complete this form in duplicate. All entries on the form except signatures should be typed or printed in ink (typewriting preferred).
6. It is not necessary to file a new Designation of Beneficiary when your name or address or that of the Insured or the beneficiary changes or when the Insured changes employing offices or retires.
7. This form must be free of erasures or alterations.
8. Properly completed designations are not valid unless they are received prior to the death of the insured by the Office specified below under ***Where to File Completed Form.***

IMPORTANT: If you wish to designate a trust as beneficiary, ask the Insured's employing office or retirement system for instructions.

Where to File Completed Form

If the Insured is an employee, file the form with the employing agency. If the Insured is a retired employee or is receiving Federal Employees' Compensation, file the form with the Office of Personnel Management, Retirement Operations Center, Validation Section, Boyers, PA 16017. If an application for retirement or compensation is pending, file the form with your employing agency if still employed, or with the Office of Personnel Management if no longer employed. Receipt of the designation form will be noted on the bottom of the form and the duplicate (Part 2) will be returned to you as evidence that the original has been received and filed. It is suggested that the duplicate be kept with the RI 76-21 (RI 76-20 for Postal Employees), the *Federal Employees' Group Life Insurance Description and Certification of Enrollment.*

Privacy Act and Public Burden Statements

Title 5, U.S. Code, chapter 87, Life Insurance, authorizes solicitation of this information. The data you furnish will be used to determine your beneficiary(ies) for your life insurance and accidental death insurance. This information will be shared with the Office of Federal Employees' Group Life Insurance in the event of your death. It will also be shared with the Office of Personnel Management and be placed in your Official Personnel Folder. This information may be disclosed to other Federal agencies or Congressional offices which may have a need to know it in connection with your application for a job, license, grant or other benefit. It may also be shared and is subject to verification, via paper, electronic media, or through the use of computer matching programs, with national, state, local or other charitable or social security administrative agencies to determine and issue benefits under their programs. In addition, to the extent this information indicates possible violation of civil or criminal law, it may be shared and verified, as noted above, with an appropriate Federal, state, or local law enforcement agency.

We also request that you provide the Insured's Social Security Number so that it may be used as an individual identifier in the Federal Employees' Group Life Insurance Program. Executive Order 9397, dated November 22, 1943, allows Federal agencies to use the Social Security Number as an individual identifier to distinguish between people with the same or similar names.

While the law does not require you to supply all the information requested on this form, doing so will assist in the prompt processing of your designation.

Agencies other than the Office of Personnel Management may have further routine uses for disclosure of information from the records systems in which they file copies of this form. If this is the case, they should provide you with any such uses which are applicable at the time you complete this form.

We think this form takes an average of 15 minutes to complete, including the time for reviewing instructions, getting the needed data, and reviewing the completed form. Send comments regarding our estimate or any other aspect of this form, including suggestions for reducing completion time, to the Office of Personnel Management, OPM Reports and Forms Officer, Washington, D.C. 20415.

Designations should be kept current. With changes in family status (marriage, divorce, death, births, etc.), you may wish to make changes in your designation(s).

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[FR Doc. 95–11076 Filed 5–4–95; 8:45 am]

BILLING CODE 6325–01–C

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–21035; File No. 812–9276]

Connecticut General Life Insurance Company, et al.

April 28, 1995.

AGENCY: Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the ''1940 Act'').

APPLICANTS: Connecticut General Life Insurance Company (''CG Life''), CG Variable Annuity Separate Account II (the ''Account''), certain separate accounts that may be established by CG Life in the future to support certain variable annuity contracts issued by CG Life (the ''Other Accounts'', collectively, with the Account, the ''Accounts'') and Cigna Financial Advisors, Inc. (''Cigna'').[1]

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act for exemptions from Sections 2(a)(32), 26(a)(2)(C), 27(c)(1) and 27(c)(2) of the 1940 Act and Rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting CG Life to deduct from the assets of the Accounts the mortality and expense risk charge imposed under certain variable annuity contracts issued by CG Life (the ''Existing Contracts'') and under any other variable annuity contracts issued by CG Life which are materially similar to the Existing Contracts and are offered through any of the Accounts (the ''Other Contracts'', together, with the Existing Contracts, the ''Contracts''). Additionally, where the Contract owner has selected an optional death benefit, the order would permit applicants to deduct from the value of the Contract an age and gender based charge for the benefits selected. The charge would be deducted upon the occurrence of one of the following events: upon the Contract anniversary; upon annuitization of the Contract; upon surrender of the Contract; or upon payment of the death benefit.

FILING DATE: The application was filed on October 11, 1994, and amended on December 19, 1994 and February 28, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 23, 1995 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, by certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants: Robert A. Picarello, Esq., S–321, Connecticut General life Insurance Company, 900 Cottage Grove Road, Hartford, Connecticut 06152.

FOR FURTHER INFORMATION CONTACT: Barbara J. Whisler, Senior Counsel, or Wendy Friedlander, Deputy Chief, both at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application, the complete application is available for a fee from the public Reference Branch of the SEC.

Applicants' Representations

1. CG Life, a stock life insurance company domiciled in Connecticut, is a wholly owned subsidiary of CIGNA Holdings, Inc., which is, in turn, wholly owned by CIGNA Corporation. The Account, established January 25, 1994 under Connecticut law, is registered with the Commission as a unit investment trust. The Account will fund the Existing Contracts issued by CG Life.

2. Cigna will serve as the distributor of and the principal underwriter for the Existing Contracts. The application states that Cigna is also expected to serve as the distributor of and the principal underwriter for the other Contracts. Cigna is a wholly owned subsidiary of Connecticut General Corporation which, in turn, is a wholly owned subsidiary of CIGNA Corporation. Cigna is a broker dealer registered under the Securities Exchange Act of 1934, an investment advisor registered under the Investment Advisers Act of 1940, and a member of the National Association of Securities Dealers, Inc.

3. The Accounts are comprised of subaccounts (the ''Subaccounts''). The assets of each Subaccount of an Account will be invested in a corresponding portfolio of one of five investment companies (the ''Funds''). Currently, the Funds have seventeen portfolios available for investment. Applicants state that each of the Funds is a diversified, open-end management investment company. Applicants also state that the number and identity of available Funds and investment portfolios may change.

4. The Existing Contracts are combination fixed and variable annuity contracts issued on an individual basis. The Existing Contracts may be purchased on a nonqualified basis or with the proceeds from certain plans qualifying for favorable tax treatment under the Internal Revenue Code of 1986, as amended (the ''Code''). The minimum initial premium is $2,500 and the minimum for subsequent premiums is $100. A minimum initial premium of $2,000 will be permitted for an Individual Retirement Annuity under Section 408 of the Code.

5. The Existing Contracts provide for certain guaranteed death benefits at no charge if an optional death benefit is not selected. The guaranteed death benefit is the value of the Account plus the value of the fixed account as of the date CG Life receives due proof of death and a payment election. If the owner of a Contract dies prior to the annuity date, the death benefit will be paid to the beneficiary.

6. CG Life imposes an annual administrative fee of $35 on Contracts having a Contract value of less than $100,000. Until the earlier of the annuity date or a surrender of the Contract, the fee will be deducted pro rata from all of the Subaccounts of the Account in which the owner of the Contract invests. Where a variable payout has been selected after the annuity date, the fee will be deducted proportionately and in installments from the annuity payments. Applicants state that the annual administrative fee partially compensates CG Life for administrative services associated with the Contracts and the Account.

7. CG Life also deducts a daily administrative expense charge equal annually to .10% of the average daily net asset value of the Account. Applicants represent that CG Life does not anticipate a profit from either the annual administrative charge or from the daily administrative charge. Applicants also state that the charges are guaranteed not to increase for a Contract once that Contract has been issued. Finally, Applicants state that CG Life will rely upon and comply with Rule 26a–1 under the 1940 Act in deducting both administrative charges.

8. A contingent deferred sales charge (the ''Sales Charge'') of up to 7% may be assessed by CG Life upon withdrawal

[1] Applicants represent that they will file an amendment to the application during the notice period and that such amendment will reflect the Applicants.

of a portion of the Account's value or upon surrender of the Contract within the first seven years of the Contract. The Sales Charge is a percentage of the amount withdrawn and is assessed against the balance remaining in the Account after withdrawal. The percentage declines depending upon how many years have passed since the withdrawn premium was originally made by the Contract owner. Applicants state that CG Life guarantees that aggregate withdrawal charges under a Contract will not exceed 8.5% of total premiums paid.

9. CG Life will impose a daily charge equal to an annual effective rate of 1.20% of the value of the net assets of the Account to compensate CG Life for assuming certain mortality and expense risks in connection with the Contracts. Applicants state that approximately .70% of the 1.20% charge is attributable to mortality risk while approximately .50% is attributable to expense risk. The mortality and expense risk charge is guaranteed not to increase for a Contract once that Contract has been issued. If the mortality and expense risk charge is insufficient to cover actual costs of the risks assumed, CG Life will bear the loss. Conversely, if the charge exceeds costs, this excess will be profit to CG Life and will be available for any corporate purpose, including payment of expenses relating to the distribution of the Contracts. Applicants state that CG Life expects a profit from the mortality and expense risk charge.

10. Applicants state that the mortality risk borne by CG Life arises from: (a) the contractual obligation of CG Life to make annuity payments regardless of how long all annuitants or any individual annuitant may live; and (b) the guarantee of a death benefit. Applicants state that the expense risk assumed by CG Life under the Contracts is the risk that the administrative charges assessed under the Contracts may be insufficient to cover actual administrative expenses incurred by CG Life.

11. When an application for a Contract is made, one or more optional death benefits may be selected by the Contract owner. The morality and expense risks charge does not compensate for the anticipated costs of providing the optional death benefits. There is, therefore, an additional charge for these benefits. Applicants describe four optional death benefits. Once election is completed, the optional death benefits chosen remain in effect for the life of the Contract absent a written request by the owner of the Contract for termination. Only one request for termination may be given. Optional death benefits must be selected at the time of application, and can not be added at a later date. The optional death benefits provide for the payment of a certain amount as the death benefit if the value of the contract is less than that amount when the death benefit is paid.

12. On each anniversary of a Contract, a charge will be made for any optional death benefit in effect for the Contract year just ended. If the charge is applicable, it will be computed in accordance with mortality tables which are made a part of the Contract and reflect the age and the gender of the owner of the Contract. The charge is based upon the ''amount at risk.'' The amount at risk is the excess of the death benefit which would be payable at the end of a Contract month over the Account value. There is no deduction made from the Account value until the Contract anniversary. At the Contract anniversary, the sum of any charges accrued at the end of each Contract month during the previous year is deducted. If the owner or the annuitant, as applicable, were to die on other than a Contract anniversary, all charges accrued will be deducted from the death benefit payable, the surrender proceeds or from the amount applied to provide annuity benefits.

13. Applicants state that CG Life expects to derive a profit from the optional death benefit charge. Applicants also represent that the table of charges in the application, which sets forth the charges for the optional death benefits, is guaranteed not to change for any Contract once that Contract is issued.

14. CG Life may incur premium taxes relating to the Contracts and CG Life will deduct these taxes upon withdrawal, annuitization or payment of the death benefit. CG Life reserves the right to deduct charges made for federal, state or local taxes incurred by CG Life in the future.

Applicants' Legal Analysis and Conditions

1. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act in connection with Applicants' assessment of the daily charge for the mortality and expense risks under the Contracts and for Applicants' assessment, where applicable, of the optional death benefit charge. Applicants state that the requested extension of relief to the Other Accounts and the Other Contracts is appropriate in the public interest. Applicants assert that the relief would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications and would, therefore, reduce administrative expenses and maximize efficient use of resources. Applicants argue that the delay and expense involved in having to repeatedly seek exemptive relief would impair the ability of CG Life to take advantage effectively of business opportunities as those opportunities arise. Applicants assert that the requested relief is consistent with the purposes of the 1940 Act and the protection of investors for the same reasons. Finally, Applicants state that were CG Life required to seek repeated exemptive relief with respect to the issues addressed in the application, no additional benefit or protection would be provided to investors through the redundant filings.

2. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in pertinent part, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the bank itself.

3. Applicants assert that the charge for morality and expense risks and the charge for the optional death benefit are reasonable in elation to the risks assumed by CG Life under the Contracts.

4. Applicants represent that the morality and expense risk charge is within the range of industry practice with respect to comparable annuity products. Applicants state that this representation is based upon Applicants' analysis of a survey of comparable contracts issued by a large number of insurance companies taking into consideration such factors as: current charge levels; benefits provided; charge level guarantees; and guaranteed annuity rates. Applicants represent that CG Life will maintain at its home office, available to the Commission, a memorandum setting forth in detail the methodology and the results of the comparative survey analyzed by Applicants.

5. Applicants represent that the charge for the optional death benefit is determined by multiplying, at the end of each Contract month, the actual

amounts at risk under the benefit or benefits selected by the cost per $1,000 of the amount at risk. Applicants also represent that the amounts at risk used will be actual figures, and that the determination of the figures on a monthly basis is reasonable. Applicants state that the cost per $1,000 of amount at risk, *i.e.*, the cost of insurance charge, was determined using assumptions regarding the expected mortality of the Contract owners. Applicants state that these assumptions reflect that the Contracts are both insurance and investment vehicles and could appeal to a different group than would a traditional annuity. CG Life represents that there could be less self selection of this product by healthy individuals than a traditional annuity. Applicants further state that, because of the optional death benefits provided under the Contracts without health underwriting, there could be self selection by unhealthy individuals who would not ordinarily quality for traditional life insurance. CG Life asserts that the foregoing mortality assumptions are reasonable. Applicants state the CG Life undertakes to maintain, at its home office and available to the Commission, a memorandum detailing the methodology used in determining that the optional death benefit charge is reasonable in relation to the risks assumed by CG Life under the Contracts.

6. Applicants acknowledge that the Sales Charge will likely be insufficient to cover all costs relating to the distribution of the Contracts. To the extent distribution costs are not covered by the Sales Charge, CG Life will recover its distribution costs from the assets of the general account. These assets may include that portion of the mortality and expense risk charge which is profit to CG Life, and that portion of the optional death benefit charge that is profit. Applicants represent that CG Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Account, the Other Accounts and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be maintained by CG Life at its home office and will be made available to the Commission.

7. CG Life also represents that the Accounts will invest only in open-end management investment companies which undertake, in the event such company adopts a plan under Rule 12b–1 of the 1940 Act to finance distribution expenses, to have such plan formulated and approved by either the company's board of directors or the board of trustees, as applicable, a majority of whom are not interested persons of such company within the meaning of the 1940 Act.

8. Applicants also request an order under Section 6(c) granting exemptions from Sections 2(a)(32) and 27(c)(1) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit the deduction from Account values of the optional death benefit charges at the following times: upon surrender; upon anuitization; and upon payment of a death benefit.

9. Section 27(c)(1) requires that periodic payment plan certificates, such as the Contracts, be redeemable securities. Section 2(a)(32) defines a ''redeemable security'' as one which, upon presentation to the issuer, entitles the holder to receive ''approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.'' Rule 22c–1 under the 1940 Act prohibits redemptions ''except at a price based on the current net asset value of such security which is next computed * * *.'' Applicants concede that where the optional death benefit charge is imposed upon annuitization, surrender or payment of the death benefit, the net dollar amount paid upon surrender or in the form of a death benefit, or applied to the purchase of annuity units under the Contract, will be less than the full accumulation unit value of the variable portion of the Contract. Applicants state, however, that the gross proceeds will equal the full net asset value of the variable portion of the Contract. Applicants represent that the difference between the gross proceeds and the net dollar amount paid or applied will be equal to the unpaid aggregate charges for the optional death benefit that have accrued since the most recent Contract anniversary, Applicants state that if the cost for the optional death benefit were deducted from the value of the Contract upon accrual, there would be no difference between the gross proceeds and the net amount paid or applied. Applicants argue that payment of the accrued but unpaid charges out of the gross proceeds of redemption, annuitization or a death benefit should be viewed as a delayed deduction of otherwise permitted charges. Applicants assert that the prohibitions of Sections 2(a)(32) and 27(c)(1) and Rule 22c–1 are designed to prevent diminution or dilution of investment company assets and should not, therefore, be applied to a transaction that, but for its timing, would be otherwise permissible.

Conclusion

Applicants assert that the resons and upon the facts set forth above, the requested exemptions from Sections 2(a)(32), 26(a)(2)(C) and 27(c)(2) of the 1940 Act and Rule 22c–1 thereunder are unnecessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division Investment Management, pursuant to delegated authority.

[FR Doc. 95–11131 Filed 5–4–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35655; File No. SR–DTC–95–05]

Self-Regulatory Organizations; The Depository Trust Company; Order Extending Temporary Approval of a Proposed Rule Change Expanding the Money Market Instrument Settlement Program

April 28, 1995.

On March 7, 1995, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–95–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 24, 1995.[2] No comment letters were received. For the reasons discussed below, the Commission is extending its temporary approval of the proposed rule change through April 30, 1996.

I. Description of the Proposal

A. Generally

On April 22, 1994, the Commission approved, on a temporary basis until April 30, 1995, DTC's proposed rule change making its existing Money Market Instrument (''MMI'') settlement services available for transactions in additional types of MMIs.[3] The current proposed rule change seeks permanent approval of the new and expanded MMI settlement program. The expanded MMI settlement program includes institutional certificates of deposit (''CD''), municipal commercial paper, and bankers' acceptances. Prior to the April 1994 enhancement, the MMI program included corporate commercial

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 35513 (March 17, 1995), 60 FR 15614.

[3] Securities Exchange Act Release No. 33958 (April 22, 1994), 59 FR 22878 [File No. SR–DTC–93–12] (order temporarily approving proposed rule change expanding DTC's MMI program).

paper (''CP''), medium-term notes, preferred stock in a CP-like mode, short-term bank notes, and discount notes.

The new and expanded MMI program is an extension of DTC's Same-Day Funds Settlement (''SDFS'') system.[4] The automated operating procedures for the MMI program are virtually the same as those followed by SDFS participants and by Institutional Delivery (''ID'') system users for basic depository services in other eligible SDFS securities. The MMI issues being made SDFS-eligible will be distributed in book-entry-only form by the issuer's issuing agent that, as with commercial paper and medium-term notes in the MMI program, will send MMI issuance instructions to DTC electronically. Settlement of an issue will be on the same day as the issuance or on a specified future day. The issuer's paying agent will serve as DTC's custodian and will hold a master or balance MMI certificate for DTC unless the issuer and its issuing and paying agent bank choose to distribute uncertificated MMIs through DTC.[5] Because SDFS-eligible MMIs will be book-entry-only, participant operating procedures for deposits and withdrawals will not apply to MMIs.

B. Risk Management

The fundamental risk in the SDFS system is that a participant will default on its payment obligation. The expanded MMI program is offered as an extension of DTC's current SDFS system; therefore, DTC will employ the same risk management controls (*e.g.*, net debit collateralization, net debit caps, and receiver-authorized deliveries) to transactions in these new MMIs as are employed in the current SDFS system.[6]

Net debit collateralization requires each participant to maintain in its account throughout the processing day collateral at least equal in value to the participant's net settlement debit. During the processing day, if a transaction will cause a net debit greater than the amount of collateral in the participant's account at the time the transaction is being processed, DTC will recycle the transaction until there is sufficient collateral in the participant's account. Transactions in the new MMI programs also will be subject to the participant's net debit cap.[7] The net debit cap helps to protect against abnormal intraday debit peaks that are out of line with a participant's prior month's average daily activity level. The net debit cap also reduces the possibility that the failure to settle by more than one participant will not cause DTC to exceed its liquidity resources. The new MMI programs also will utilize the receiver-authorized delivery control which allows a participant to monitor deliveries and payment orders directed to its account before the orders are posted to the account.

In addition, DTC's three failure to settle procedures applicable to the CP program will be applicable to the new MMI programs. First, DTC will employ the same procedures with regard to the sequence in which DTC will use MMI collateral and eliminate payment order debits in a failing participant's account. Second, if DTC is notified before 3 p.m. eastern standard time (''E.S.T.'') that a paying agent will not pay on an MMI issuer's maturity presentments, reorganization presentments, periodic principal presentments, or periodic income presentments or if DTC is informed of an MMI issuer's bankruptcy and a participant fails to settle with DTC on that day, DTC has the authority to reduce the settlement credits of participants who had transactions on the day of default with the defaulting issuer or the defaulting participant on the day of default. Third, if the paying agent has not settled with DTC by noon E.S.T. on the DTC business day following the settlement day or if a paying agent is determined to be insolvent according to DTC's rules, DTC will notify the issuers utilizing that paying agent and provide those issuers with information on any presentments related to their MMIs on which the PA failed to pay DTC.

C. Expanded MMI Program

DTC will be expanding its CP program to include ''uncommon CP.'' Uncommon CP is CP paying income periodically, a variable amount of income, or a variable amount of principal. It also includes CP denominated in a foreign currency, CP with a maturity of 271 days to a year, or corporate variable-rate demand obligations in CP mode. These instruments were not included in the original CP program.[8]

DTC also will be enhancing its MMI program for medium-term notes, short-term notes, discount notes, and preferred stock in CP-like mode. Processing of medium-term notes will be enhanced by DTC's collection and allocation of income, principal, reorganization, and maturity payments within the SDFS system. Paying agents will no longer have to separately wire such payments to DTC. Instead, as with maturity payments in the CP program, these payments will be included in each paying agents' net settlement figure due to or from DTC at the end of each day. Similarly, settlement of short-term notes will be enhanced with the inclusion of maturity payments and periodic income payments in the SDFS system and in the paying agent's net SDFS amounts due to or from DTC. The restriction that short-term notes must have a minimum maturity period of thirty days to be included in this program will be removed. The short-term notes, the discount notes, and the preferred stock in CP-like mode aspects of the program will all provide for uncertificated issuer programs. However, one master note or certificate may be held for DTC by the paying agent.

II. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. As discussed below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The new and enhanced MMI program is an extension of DTC's current SDFS system and includes many of the same

[4] DTC's SDFS system currently includes the following issue types: corporate commercial paper, municipal notes and bonds, municipal variable-rate demand obligations, zero coupon bonds backed by U.S. Government securities, continuously offered medium-term corporate notes, short-term bank notes, auction-rate and tender-rate preferred stocks and notes, collateralized mortgage obligations and other asset-backed securities, Government trust certificates and Government agency securities not eligible for the Fed's book-entry system, retail certificates of deposit, corporate and municipal variable mode obligations, corporate bonds, discount notes, and unit trusts. For a detailed description and discussion of DTC's SDFS system, including the implementation of the commercial paper program, refer to Securities Exchange Act Release Nos. 26051 (August 31, 1988), 53 FR 34853 [File No. SR–DTC–88–06] (order permanently approving DTC's SDFS system) and 30986 (July 31, 1992), 57 FR 35856 [File No. SR–DTC–92–01] (order approving implementation of commercial paper program).

[5] Uncertificated MMIs are not evidenced by any certificate whatsoever. Bills, notes, bonds, and other securities have been issued in uncertificated form by U.S. government and federal agencies for many years.

[6] *Supra* note 4.

[7] Each participant's net debit is limited throughout the processing day to a net debit cap that is the least of the following four amounts: (1) A multiple of the participant's required and voluntary deposits to the SDFS fund, (2) an amount that is equal to seventy-five percent of DTC's liquidity resources, including cash deposits to the SDFS fund and lines of credit for loans to facilitate SDFS settlement, (3) an amount, if any, determined by the participant's settling bank, and (4) an amount, if any, determined by DTC. *Supra* note 4.

[8] *Supra* note 4.

[9] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

risk management features that are employed in the SDFS system. The Commission previously examined these features with DTC first proposed the SDFS system,[10] when the CP program was added,[11] and when the Commission granted temporary approval to the expanded MMI program.[12] At those times, the Commission found, and continues to believe, that these risk management measures are consistent with Section 17A of the Act and should minimize the impact of a default by a participant in the SDFS system.

The use of provisional credits and unwind procedures if an MMI issuer were to default, however, could increase the risk of settlement gridlock in certain circumstances. For example, if DTC were to confirm the insolvency of an MMI issuer before 3:00 p.m.,[13] DTC would reverse all participants' credits attributable to the insolvent issuer without regard to any of the risk management controls. Such reversals of credits could result in a participant having a net debit that exceeds the participant's net debit cap and DTC's liquidity resources. If such a participant then failed to settle its net debit with DTC, DTC could possibly have difficulty completing other settlements.

As an interim solution to reduce these risks, DTC has obtained additional lines of credit dedicated to the completion of settlement in the SDFS system in the event a participant fails to settle after application of the unwind procedures. The additional lines of credit are supported by securities pledged to the SDFS fund and are not included as a part of DTC's liquidity resources when determining a participant's net debit cap. DTC also continues to employ its liquidity monitoring system which simulates double default scenarios every fifteen minutes beginning at 2:00 p.m. E.S.T.

As discussed in the original order granting temporary approval to DTC's MMI program, DTC proposed a long term solution to reduce the risks associated with the use of provisional credits. The solution, which changes the components of DTC's liquidity resources and seeks to implement new risk management controls, was designed after consulting with the Federal Reserve Bank of New York and recently has been filed with the Commission for approval.[14] However, because the largest provisional net credit procedure is not scheduled for implementation until the third quarter of 1995, the Commission believes that extension of temporary approval of the rule change is appropriate pending the full operational capability of DTC's system enhancements.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

Ir is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–95–05) be, and hereby is, approved on a temporary basis through April 30, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

[FR Doc. 95–11130 Filed 5–4–95; 8:45 am]

BILLING CODE 8010–01–M

[10] *Supra* note 4.

[11] *Supra* note 4.

[12] *Supra* note 3.

[13] If DTC can not confirm that an MMI issuer is insolvent before 3:00 p.m. E.S.T., DTC will not reverse credits attributable to that issuer because after 3:00 p.m. E.S.T. credits are no longer provisional in DTC's SDFS system.

[14] For a complete discussion of DTC's proposed changes, refer to Securities Exchange Act Release No. 35613 (April 17, 1995), 60 FR 19971 [File No. SR–DTC–95–06] (notice of proposed rule change). DTC proposes to establish to all-cash participants fund in an amount of $400 million and a fixed net debit cap of $900 million. DTC has also proposed to add the Largest Provisional Net Credit (''LPNC'') calculation control which is to be applied to a participant's net settlement balance and collateral monitor in order to protect DTC against the combined failure of a MMI issuer and a participant.

Under the LPNC Control, DTC will subtract the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMIs from the participant's collateral monitor (''simulated collateral monitor'') and net debit or credit balance (''simulated balance''). If a transaction will cause the simulated collateral monitor to turn negative (*i.e.,* the participant's collateral would be insufficient to cover its simulated net debit after the transaction) or the resulting net debit balance to exceed the participant's net debit cap, the transaction will be blocked. Blocked transactions will be recycled until credits from other transactions in MMIs of issuers other than those of the largest provisional net credit cause the simulated collateral monitor to be positive or the resulting net debit balance to be within the net debit cap limits.

[15] 17 CFR 200.30–3(a)(12) (1994).

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster Loan Area #2768

Alabama; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on April 21, 1995, I find that the counties of Cullman, DeKalb, Marion, Marshall and Winston in the State of Alabama constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding which occurred February 15 through February 20, 1995. Applications for loans for physical damages may be filed until the close of business on June 20, 1995, and for loans for economic injury until the close of business on January 22, 1996, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Blount, Cherokee, Etowah, Fayette, Franklin, Jackson, Lamar, Lawrence, Madison, Morgan, and Walker in the State of Alabama; Chatooga, Dade, and Walker in the State of Georgia; and Itawamba and Monroe in the State of Mississippi may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 276812. For economic injury the numbers are 850100 for Alabama; 850200 for Georgia; and 850300 for Mississippi.

Dated: April 28, 1995.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 95–11106 Filed 5–4–95; 8:45 am]

BILLING CODE 8025–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Kitty Hawk Woods, Dare County, NC

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Kitty Hawk

Woods, located in Kitty Hawk, Dare County, North Carolina, is affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notice of serious interest to purchase or effect other transfer of all or any portion of this property may be mailed or faxed to the RTC until August 3, 1995.

ADDRESSES: Copies of detailed descriptions of this property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Dan Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue, NE, Marquis One Tower, 10th Floor, Atlanta, GA 30303, (404) 230–6594; Fax (404) 230–8159.

SUPPLEMENTARY INFORMATION: The Kitty Hawk Woods property is located at Woods Road (SR 1206), Kitty Hawk, North Carolina; south of Southern Shores, west of the Highway 158 By-Pass, north of Kitty Hawk Bay and east of the Currituck Sound. The site consists of approximately 124.32 acres of undeveloped land within a coastal zone and undeveloped floodplain. This property contains wetlands and a Maritime Swamp Forest and Deciduous Swamp Forest which are considered Nationally Significant Natural Areas. There is a Dedicated State Nature Preserve consisting of approximately 460 acres east of Woods Road and the Kitty Hawk Woods property is adjacent to lands managed by the Town of Kitty Hawk for natural resource conservation purposes. This property is covered property within the meaning of Section 10 of the Coastal Barrier Improvement Act of 1990, P.L. 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of all or any portion of this property must be received on or before August 3, 1995 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. ''Qualified organizations'' pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form:

Notice of Serious Interest

RE: [insert name of property]

Federal Register Publication Date: _____ [insert Federal Register publication date]

1. Entity name.
2. Declaration of eligibility to submit Notice under criteria set forth in the Coastal Barrier Improvement Act of 1990, P.L. 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the United States Internal Revenue Service regarding the organization's status under section 170(h)(3) of the U.S. Internal Revenue Code (26 U.S.C. 170(h)(3)).
3. Brief description of proposed terms of purchase or other offer for all or any portion of the property (e.g., price, method of financing, expected closing date, etc.).
4. Declaration of entity that it intends to use the property for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes (12 U.S.C. 1441a–3(b)(4)), as provided in a clear written description of the purpose(s) to which the property will be put and the location and acreage of the area covered by each purpose(s) including a declaration of entity that it will accept the placement, by the RTC, of an easement or deed restriction on the property consistent with its intended conservation use(s) as stated in its notice of serious interest.
5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Resolution Trust Corporation.

Dated: May 1, 1995.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 95–11090 Filed 5–4–95; 8:45 am]

BILLING CODE 6714–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSRM–94–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Birmingham Southern Railroad Company (BS)

(Waiver Petition Docket Number RSRM–94–1)

The BS has petitioned for relief from the Rear End Marking Device regulations, Title 49 CFR Part 221. The railroad states that the use of a rear end marking device is unnecessary on their railroad due to their method of operation on main tracks, which requires an absolute block behind all trains operated, and granting the exemption is in the public interest and will not adversely affect safety. The BS is a Class 3 switching and terminal railroad headquartered in Fairfield (Birmingham), Alabama. It operates in Birmingham, Alabama, and surrounding area, over about 84 track miles. A particular line segment known as the Port Birmingham Main, a distance of approximately 15 miles, is designated as a main track.

Northern Nevada Railroad Corporation (NN)

(Waiver Petition Docket Number RSGM–95–5)

The NN seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, Title 49 CFR Part 223 for two locomotives. The 70-ton switcher locomotives were built by General Electric Company in 1950 and 1952 and were recently acquired from the Santa Maria Valley Railroad Company. The NN operates 129 miles of track between Shafter, its interchange with Union Pacific Railroad Company (UP), and Keystone, Nevada. In 1995 the line will be extended to Reiptown, Nevada, a distance of approximately 3 miles, to a new concentrator mill site of Magna Copper. Also in 1995, NN expects to complete a rail/rail crossing at Shafter with the UP and reactivate 18 miles of isolated track to the Southern Pacific Transportation Company interchange at Cobre, Nevada. This will give NN a total of 150 track miles. The area of operation is mostly flat and is extremely rural in nature with a few small towns. The railroad states that there is no record of vandalism.

Issued in Washington, DC on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11064 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Procor Limited a request for a waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Procor Limited

(Waiver Petition, Docket Number SA–95–1)

Procor Limited seeks a waiver of compliance from certain sections of Title 49 CFR Part 231, Railroad Safety Appliance Standards. Procor Limited is requesting a permanent waiver of the provisions of Title 49 CFR Part 231 which requires that handholds be securely fastened with * * * bolts with nuts outside (when possible) and riveted over, or with not less than ½-inch rivets.

Procor Limited built 125 covered hopper cars in 1991 and 58 more covered hopper cars in 1995 for a total of 183 cars that have the side and end handholds secured with the nuts of the bolts to the inside. The bolted connections of the handholds of all 183 cars were applied and the bolts chisel checked under a controlled condition. Car series: UNPX 127000 through 127124, 125 cars; UNPX 128000 through 128029, 30 cars; UNPX 128050 through 128077, 28 cars, Procor Limited requests to continue the use of these subject cars throughout the United States.

Title 49 CFR 231.27(e)(4) requires that side handholds be securely fastened with not less than ½-inch bolts with nuts outside (when possible) and riveted over, or with not less than ½-inch rivets. Several other sections in Part 231 address the application of safety appliances (sill steps, ladder treads, etc.) which requires that they be securely fastened with not less than ½-inch bolts with nuts outside (when possible) and riveted over, or with not less than ½-inch rivets.

Procor Limited states the estimated cost to remove and replace 66 fasteners on each car is $685.00. Adding out of service time, the anticipated total cost impact of this modification is $215,000. The cost of changing the nuts from the inside to the outside will not enhance the safe operation of these cars.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–95–1) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of publication of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

Issued in Washington, DC on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11065 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for Waivers of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the MK Rail Corporation (MKRC) and CSX Transportation, Incorporated (CSXT), a request for waiver of compliance with certain requirements of the Federal rail safety regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

MK Rail Corporation (MKRC)

CSX Transportation, Incorporated (CSXT)

(FRA Waiver Petition Docket Numbers PB–95–1—SA–95–2)

The MKRC and CSXT seek a waiver of compliance from certain regulatory provisions and from underlying Safety Appliance Act requirements in connection with a test of a train known as the Iron Highway. Petitioners seek a waiver of Title 49 CFR 231.6, (Railroad Safety Appliance Standards), Title 49 CFR 232.2, Title 49 CFR 232.13 (Railroad Power Brakes and Drawbars), and Appendix B, Definition Section 13 (Emergency brake-cylinder pressure) and related emergency requirements provisions. Petitioners also seek, pursuant to 45 U.S.C. 20306, exemption from the requirements of portions of 45 U.S.C. 20302(a)(1), (a)(2) and (a)(3) which are the statutory bases for the subject requirements.

The interim version of the Iron Highway train will consist of two conventional type locomotives with modified cab controls, two adapter platforms, one split-ramp platform and 40 load-carrying ramp platforms. The Iron Highway train, which functions as one freight car, is equipped with articulated joints and a continuous deck, permitting highway trailers to bridge the joints with no length restrictions as it is virtually slack free. According to the petitioners, it will reduce weight and train preparation time and will eliminate the loss, damage and delay inherent during current, conventional switching activity. Operating costs are projected to be

further reduced by the use of stub axles to reduce drag, wheel and track wear, and dead weight, and by the improvement of weight distribution. Maintenance downtime costs will be reduced and performance enhanced by the continuous monitoring of the bearing and brake system. Impending problems will be detected and resolved prior to major breakdowns and train delays.

The Iron Highway train is approximately 1,400 feet in length. The load carrying-platforms are joined by articulated joints which are approximately 30 inches above the top of rail and therefore are out of compliance with standard coupler height. These joints will be separated only for maintenance requirements. Thus, there is no need for conventional uncoupling levers nor for end-sill handholds. The trailers will be ''circus'' loaded and locked in place automatically from the cab of the hostler tractor. There is no need for side handholds and sill steps.

The rear of the special adapter platform will be joined to the load-carrying platforms by an articulated joint. At the front, where the platform is coupled to the locomotive by a conventional type coupler, the platform will include standard safety appliances, such as end sill handholds and side handholds which are extended above the deck and side sill steps.

The split-ramp is located at the center of the Iron Highway train and will include side sill steps and side handholds to provide safe access to the deck. Additional safety is provided by the extension of handholds above the deck: on one end, on both sides, and near a corner position. End sill handholds will not be applied as they would not be accessible because of the continuous deck.

The locomotives used to operate the Iron Highway train will be equipped with a freight/passenger 26–C automatic brake valve, which will be set in the passenger position with graduated release. This feature will greatly enhance train braking, with the braking positions being minimum application, service application, zone, and emergency. This system incorporates improvements superior to conventional freight brake equipment.

There is a KE–2 control valve on every fourth 30-foot platform and a vent valve on every other platform. The Iron Highway train will be equipped with a two-pipe system, having a control pipe (brake pipe) and a supply pipe (train-lined main reservoir) to provide an inexhaustible brake system, eliminating the use of emergency reservoirs. The retarding forces are provided by compressed air, via a main reservoir pipe controlled by a pipe of 90 psi, cylinder pistons, brake rigging and with a brake shoe at each wheel location. However, this brake system does not include emergency brake cylinder pressure as specified in Title 49 CFR 232, Appendix B. Calculations indicate that stop distances for the Iron Highway train will be better than that of standard intermodal trains. Data will be recorded and provided from the actual stop distance tests which will be performed at the Pueblo Test Center.

Initial terminal train air brake tests on the Iron Highway will be performed in full compliance with 232.12. An initial terminal train air brake test will be performed once during each 24-hour period, consistent with the completion of a round trip by each train.

The petitioners request FRA's approval of the proposed use of the computer-controlled inspection system to perform intermediate type air brake tests when such tests are required by 232.13. It is proposed that these intermediate tests be performed from the locomotive cab utilizing the special equipment installed in the conventional locomotives to be used in the Iron Highway trains.

The locomotives dedicated to this Iron Highway service will each be equipped with two special purpose computers which will display on a monitor continuous information regarding the brake status of each platform (e.g., cylinder position (applied or released), indication of cylinder pressure and detection of stuck brakes. The computers will also monitor and display wheel bearing temperatures, indicate when the split-ramp platform is separated or secured, and will locate the occurrence and position of faults. This information will be sufficient to establish that during the applied test all brakes are applied, and during the release test that all brakes are released. The Iron Highway train air brake system is designed to provide constant monitoring of train brake activity. The engineer will have the benefit of much more information relative to the condition and functioning of the air brakes than has ever been available prior to this invention.

Additionally, the Iron Highway train has replaced the conventional handbrakes function of holding or retarding the train in the absence of any brake cylinder pressure, with spring applied, automatic parking brakes on the first five and last five platforms. The design of this brake ensures that it cannot be left applied inadvertently, thus avoiding dragging brakes. During spring-brake operation, the brake shoe will be forced against the wheel tread surface at the force of approximately a 50 percent loaded car-full service value. This general type parking brake has been in service for several years and has been proven successful.

This waiver request is for a test operation of two interim version Iron Highway trains for a period of up to 3 years on specified rail lines, which lines may vary from time to time, subject to prior notice to FRA. The initial test requested is from Livonia, Michigan and East Chicago, Illinois. The final version of the Iron Highway train is expected to be available in the summer of 1996.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (e.g., FRA Docket Number PB–95–1 and SA–95–2) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Communications received before *June 1, 1995* will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.—5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The FRA has determined that a public hearing be held in this matter. Accordingly a public hearing is hereby set for 10:00 a.m. on May 25, 1995, in room number 6244, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (Title 49 CFR Part 211.25), by a representative designated by the FRA. The hearing will be a nonadversary proceeding in which all interested parties will be given the opportunity to express their views regarding this waiver petition.

Issued in Washington, D.C. on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11066 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

Petition for Exemption or Waiver of Compliance

In accordance with Title 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–94–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received within 45 days of the date of publication of this notice, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

West Jersey Railroad Company (WJ)

(Waiver Petition Docket Number RSGM–94–21)

The WJ seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive WJ 56, an ALCO model T–6 Switcher, will be operated on 17.44 miles of track between Salem and Swedesboro, New Jersey. The area is very rural and not subject to vandalism. The WJ has operated two locomotives under Waiver Docket Number RSGM–88–28 since 1991.

Cornhusker Railcar Services Incorporated (CRCX)

(Waiver Petition Docket Number RSGM–94–22)

The CRCX operates railcar repair shops at Grand Island and Hastings, Nebraska. Company owned locomotives are employed at each facility for switching, however only the EMD SW–8 locomotive at Hastings operates on track outside their plant. Approximately 10 percent of the time this locomotive operates on trackage jointly owned by Burlington Northern Railroad Company and Union Pacific Railroad Company. The locomotive is presently undergoing repairs at Grand Island.

NEBKOTA Railway, Incorporated (NRI)

(Waiver Petition Docket Number RSGM–94–24)

The NRI seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for two locomotives and one caboose. The NRI operates on 73.2 miles of track between Merriman, Nebraska, and near Chadron, Nebraska. The largest city on this line has a population of 1,800. NRI also has trackage rights on 28.3 miles of Chicago and North Western Transportation Company track between near Chadron and Crawford, Nebraska. The largest city on this segment has a population of 5,500. The NRI states there have been no incidents of vandalism on either line in the past five years. The area is predominantly devoted to farming and ranching.

Semo Port Railroad, Incorporated (SE)

(Waiver Petition Docket Number RSGM–94–25)

The Southeast Missouri Regional Port Authority on behalf of SE seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive is an EMD GP–7–L road switcher built in 1953 for the United States Army and used solely by them since then. The SE is located at Scott City, Missouri, and operates on FRA excepted track at a maximum speed of 10 mph.

Yakima Valley Rail and Steam Museum (YVRX)

(Waiver Petition Docket Number RSGM–94–27)

The YVRX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. Locomotive number 12, a GE 65-ton center cab switcher built in 1942, had previously been in service at the Puget Sound Naval Ship Yards in Bremerton, Washington. The locomotive will be operated on the Simcoe Branch of the Toppenish Simcoe and Western Railroad, a 21 mile rural short line. The line is under the auspices of the YVRX whose intent is to help preserve railroading history in the State of Washington and provide both passenger and freight services.

Pittsburgh and Conneaut Dock Company (PCDX)

(Waiver Petition Docket Number RSGM–95–1)

The PCDX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for four locomotives. The locomotives, EMD model F–7's built in 1952, are used in yard switching service at the P&C Dock facilities at Conneaut, Ohio. Three of the locomotives are normally not manned since they are operated by remote control. Normal maintenance is performed in the Bessemer and Lake Erie Railroad Company (BLE) repair facilities at Conneaut. When heavy repairs are needed, the locomotives are hauled dead-in-tow to the BLE shop at Greenville, Pennsylvania. The petition requests that this movement be allowed to continue.

Econo Rail Corporation (TXTX)

(Waiver Petition Docket Number RSGM–95–2)

The TXTX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for three locomotives. The TXTX operates 3 miles of track inside the Port of Beaumont at Beaumont, Texas. All work is performed within a fenced and guarded area. Maximum operating speed is 15 mph. The railroad states that there has been no vandalism since operations began in 1978.

ISS Rail, Incorporated (ISSR)

(Waiver Petition Docket Number RSGM 95–3)

The ISSR seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for one locomotive. The locomotive, ISSR 3003, an ALCO 1000 HP switcher built in 1946 operates on approximately 10 track miles in New Castle, Pennsylvania. ISSR interchanges with Conrail and CSX Transportation on jointly accessed track. The locomotive is presently equipped with shatterproof safety glass.

Southern Railroad Company of New Jersey (SRNJ)

(Waiver Petition Docket Number RSGM–95–4)

The SRNJ seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (Title 49 CFR Part 223) for three locomotives. The SRNJ operates exclusively in southern New Jersey which is primarily rural in nature. Much of the trackage is within the ''Pinelands'' which is protected from residential and industrial development. SRNJ states that there is approximately one grade crossing per mile of track.

Northern Indiana Commuter Transportation District (NICD)

(Waiver Petition Docket Number LI–94–12)

The NICD seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (Title 49 CFR Part 229) for their locomotives. NICD is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. NICD requests an extension of one year.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. NICD operates 48 electric MU cars and 10 nonpowered trailer cars from Michiana Regional Airport at South Bend, Indiana, to Randolph Street Station in Chicago, Illinois. Approximately 1/6 of this route (15 miles) is operated over trackage owned by Northeast Illinois Railroad Corporation (METRA). All NICD equipment was built by Sumitomo Corporation of America and operates at a maximum speed of 79 mph. Standard locomotive event recorders are not applicable to the NICD cars and attempts to interest manufacturers to produce an acceptable recorder have been delayed until recently. Due to the competitive bid process, vendor's ability to deliver and installation of the systems, NICD will be unable to comply with the May 5, 1995 date and has requested an extension until May 5, 1996.

Long Island Rail Road (LI)

(Waiver Petition Docket Number LI–95–1)

The LI seeks a temporary waiver of compliance with certain provisions of the Locomotive Safety Standards (Title 49 CFR Part 229) for their locomotives and electric MU cars. LI is seeking relief from the requirements of Section 229.135 that all trains operating over 30 mph shall be equipped with an event recorder by May 5, 1995. LI requests the compliance date be extended to November 5, 1995, for their 71 diesel-electric locomotives and to December 5, 1996, for their 466 electric MU cars.

The Locomotive Safety Standards were revised on July 8, 1993, to require each lead locomotive of trains operating over 30 mph to be equipped with an event recorder by May 5, 1995. LI cites four factors which have an adverse impact on compliance with the May 5, 1995, date for the electric MU cars; nonavailability of off-the-shelf event recorders, impact on car availability, limited physical plant/manpower resources and energy conservation/cost savings. To optimize these factors and complete the installation, LI estimates will require the program be extended to December 5, 1996. While off-the-shelf event recorders are available for the diesel-electric locomotives, a compatibility problem arose on the initial installation and a new speed sensing system must also be installed. LI projects this application to be completed by November 5, 1995.

Frederick W. Seibold (Central Plateau) (CEPX)

(Waiver Petition Docket Number RSRM–95–1)

Frederick W. Seibold, owner of private rail car ''Central Plateau'' seeks a permanent waiver of compliance with certain provisions of the Rear End Marking Device Standards (Title 49 CFR Part 221) for a new design rear end marking device. Mr. Seibold has requested approval of an ''antique'' marking device consisting of the industry standard light bulb mounted in a vintage Handlan Number 79 Rear End Marker shell. This will enhance the restoration of the private car ''Central Plateau'' while meeting the rear end marking device requirements for passenger cars.

''Guidelines For Testing FRA Rear End Marking Devices'' specifies the test procedures for approval of new marking devices. Tests are conducted and approval is granted for the complete device (light source and housing). There is no separate test of the light source. The guidelines require that five samples of the marking device be tested. Mr. Seibold's proposal includes 60PAR/2/R sealed beam lamp. This same lamp has been approved as part of all marking devices used by Amtrak and others. To forego the specific testing requirements of Part 221, which are written for commercially produced devices, Mr. Seibold requests an FRA identification number be assigned to his marking device which includes a lamp already approved in other devices.

Issued in Washington, DC on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11067 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to Title 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of Title 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3352

Applicant: Canadian American Railroad Company, Mr. Alfred E. Michon, President, Northern Maine Junction Park, RR2 Box 45, Bangor, Maine 04401–9602

The Canadian American Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, of the single main track and sidings, between ''Boundary'', milepost 101.7 and Brownsville Junction, milepost 0.0, on the Moosehead Subdivision; and between milepost 104.84 and milepost 105.15, on the Mattawamkeag Subdivision, in the State of Maine, a distance of approximately 102 miles.

The reason given for the proposed changes is the abandonment of passenger service and changes in freight train service has altered operations, and the maintenance and repair of the signal system is very expensive.

BS–AP–No. 3353

Applicant: Eastern Maine Railway Company, Mr. E. Scott Smith, 11 Gifford Road, P.O. Box 5666, Saint John, New Brunswick, Canada, E21 5B6

The Eastern Maine Railway Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, of the single main track and sidings, between Vanceboro, milepost 5.6 and Brownsville Junction, milepost 104.84, Maine, on the Mattawamkeag Subdivision, a distance of approximately 99.2 miles.

The reason given for the proposed changes is the abandonment of passenger service and changes in freight train service has altered operations, and the maintenance and repair of the signal system is very expensive.

Rules Standards and Instructions Application (RS&I–AP) No. 1095

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202

CSX Transportation, Incorporated (CSX) seeks permanent relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, Section 236.566, to the extent that CSX be allowed to operate non-equipped locomotives for all CSX freight trains, on all main tracks of the RF&P Subdivision, between Richmond, Virginia, milepost CFP 4.8, and Alexandria, Virginia, milepost 110.1; including the discontinuance and removal of all on board automatic cab signal and train control equipment from all CSX freight locomotives.

The applicant's justification for relief is that the 106 mile RF&P Subdivision, is the only subdivision on CSX that requires the use of automatic cab signal and train control equipped locomotives. CSX desires to operate trains on the RF&P Subdivision in exactly the same safe manner as the balance of their 18,000 mile system. CSX has 2,754 road locomotives of which only 51 are equipped with automatic cab signal and train control apparatus. Utilization of these locomotives is severely restricted and requires special locomotive management procedures to ensure that one of the equipped locomotives is in the lead of every freight consist operated over the RF&P Subdivision.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11063 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief from the Requirements of 49 CFR Part 236.

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS-AP)-No. 3350

Applicant: Montana Rail Link, Incorporated, Mr. Richard L. Keller, Chief Engineer, PO Box 8779, Missoula, Montana 59807.

The Montana Rail Link, Incorporated seeks approval of the proposed modification of the traffic control signal system, on the single main track, between West Toston, milepost 194.3 and East Louisville, milepost 228.1, Montana, on the Second Subdivision; consisting of the discontinuance and removal of 21 automatic intermediate block signals and installation of 14 automatic intermediate block signals, associated with the installation of electronic coded track circuits and pole line elimination.

The reason given for the proposed changes is to upgrade the signal system and improve train operations.

BS–AP-No. 3351

Applicants: National Railroad Passenger Corporation, Ms. Alison Conway-Smith, Vice President/Chief Engineer, 30th and Market Streets, Philadelphia, Pennsylvania 19104

Southern Pacific Transportation Company, Mr. J.A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

Peninsula Corridor Joint Powers Board, Mr. Jerome Kirzner, Director Rail Services, 1250 San Carlos Avenue, PO Box 3006, San Carlos, California 94105.

The National Railroad Passenger Corporation, Southern Pacific Transportation Company, and the Peninsula Corridor Joint Powers Board jointly seek approval of the proposed discontinuance and removal of the barricade detectors, from the signal system, at Dumbarton Street, milepost 26.8 and Berkshire Street, milepost 26.9, on the Peninsula Corridor, near San Jose, California, involving the installation of additional mechanical protection to include Jersey Barricades.

The reasons given for the proposed changes is to eliminate a chronic vandalism problem of false activations, resulting in train delays, and history of these detectors reveals no known activations that actually prevented an accident.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on April 25, 1995.

Phil Olekszyk,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 95–11062 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 93–02; Notice 9]

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Vehicles Laboratory Test Procedure

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public availability and request for comment.

SUMMARY: On April 25, 1994, NHTSA published a final rule establishing a new Federal Motor Vehicle Safety Standard No. 303, ''Fuel System Integrity of Compressed Natural Gas Vehicles,'' that specifies vehicle performance requirements for the fuel system of

vehicles fueled by compressed natural gas (59 FR 19648). The standard enhances the fuel system integrity of compressed natural gas (CNG) vehicles by subjecting the vehicles to crash testing and placing a limit on the post-crash pressure drop in the fuel system. The standard specifies frontal, rear, and lateral barrier crash tests for light vehicles and a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds. NHTSA anticipates contracting with laboratories to obtain test data to determine whether particular motor vehicles comply with the CNG fuel system integrity requirements, just as it does with the agency's other standards.

The agency has prepared a draft Laboratory Test Procedure for possible use by contractors in testing vehicles for compliance with the CNG fuel system integrity requirements. Because of the complexity of and public interest in issues associated with the test procedure, NHTSA is making the draft available to the public and requesting comment on it. NHTSA will consider any public comments before adopting a final Laboratory Test Procedure.

DATES: The closing date for comments on this notice is June 5, 1995.

ADDRESSES: All comments on this notice should refer to the above docket and notice numbers and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. It is requested that 10 copies be submitted. The Docket hours are 9:30 am to 4 pm, Monday through Friday. The draft Laboratory Test Procedure is available in the docket.

FOR FURTHER INFORMATION CONTACT: Mark Levine, Office of Vehicle Safety Compliance, NHTSA (202–366–5290).

SUPPLEMENTARY INFORMATION: On April 25, 1994, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard No. 303 that specifies vehicle performance requirements for the fuel system of vehicles fueled by compressed natural gas (CNG). The standard enhances the fuel system integrity of CNG vehicles by subjecting the vehicles to crash testing and placing a limit on the post-crash pressure drop in the fuel system. The standard specifies frontal, rear, and lateral barrier crash tests for light vehicles (passenger cars, vans, and light trucks) and a moving contoured barrier crash test for school buses with a GVWR over 10,000 pounds. The purpose of this new standard is to reduce deaths and injuries caused by fires resulting from fuel leakage during and after crashes involving vehicles fueled by CNG. The requirements become effective September 1, 1995.

NHTSA anticipates that it will contract with laboratories to obtain compliance test data for the CNG vehicle fuel system integrity requirements as it does for other agency standards. To aid the contracted laboratories in conducting compliance tests for the agency, NHTSA provides them with Laboratory Test Procedures which include a uniform testing and data recording format and suggestions for the use of specific equipment and procedures. In keeping with that practice, NHTSA has prepared a draft Laboratory Test Procedure for the CNG vehicle fuel system integrity procedures and performance requirements of FMVSS No. 303. Normally, the agency would simply proceed to prepare a final version of the Laboratory Test Procedure and make it public. NHTSA typically has not requested public comments on draft Laboratory Test Procedures for other standards in the past because there is no legal requirement to do so since such a document is not a ''rule'' and there was not so much public interest in prior test procedure documents.

However, because of the complexity of and public interest in issues involved with the test procedure, NHTSA is requesting comment from the public on the document. NHTSA will consider any public comments before adopting a final Laboratory Test Procedure. The agency wishes to emphasize that it does not intend, by issuing this notice, to signal a general change in its practice regarding the establishment of test procedures. NHTSA may choose to adopt or change any Laboratory Test Procedure without allowing an opportunity for public comment.

NHTSA invites interested persons to submit comments on the draft Laboratory Test Procedure for Standard No. 303. The agency requests that persons submit 10 copies of comments. All comments must not exceed 15 pages in length (49 CFR 553.21).

Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion. If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address. To the extent possible, comments filed after the closing date will also be considered.

Those persons desiring to be notified upon receipt of their comments in the docket should enclosed a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 30103 and 30162; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 2, 1995.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 95–11168 Filed 5–4–95; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

April 28, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

U.S. Customs Service (CUS)

OMB Number: 1515–0005

Form Number: CF 7512, CF 7512–A, and CF 7512–B

Type of Review: Extension

Title: Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit

Description: 19 USC 1552–1554 authorizes the movement of imported merchandise from the port of importation to another Customs port prior to release of merchandise from

Customs custody. The revised Customs Form 7512 will be used for transportation entries, exportation entries, transfer permits and cargo transmitting the U.S. to Canada.
Respondents: Business or other for-profit
Estimated Number of Respondents: 10,000
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 86,000 hours
OMB Number: 1515–0161
Form Number: None
Type of Review: Extension
Title: Importation of Ethyl Alcohol for Non-Beverage Uses
Description: This declaration is used by Customs to ensure that the ethyl alcohol is actually used for the purposes declared at the time of entry.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents: 300
Estimated Burden Hours Per Respondent: 5 minutes
Frequency of Response: On occasion
Estimated Total Reporting Burden: 25 hours
Clearance Officer: Laverne Williams (202) 927–0229, U.S. Customs Service, Printing and Records Management Branch, Room 6216, 1301 Constitution Avenue, N.W., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–11079 Filed 5–4–95; 8:45 am]

BILLING CODE 4820–02–P

Public Information Collection Requirements Submitted to OMB for Review.

April 26, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request: In order to conduct the customer satisfaction survey described below during May and June 1995, the Department of Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 9, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349
Project Number: SOI–010
Type of Review: Revision
Title: 1995 TeleForm Script Usability Testing
Description: The purpose of the TeleForm usability assessment testing is to gather preliminary information from taxpayers about the comprehensibility and organization of the TeleForm scripts. We also want to obtain reactions and opinions of respondents using the application. This testing will allow the IRS to improve the TeleForm application as well as make it easier for taxpayers to use.
Respondents: Individuals or households
Estimated Number of Respondents: 45
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Other
Estimated Total Reporting Burden: 45 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–11080 Filed 5–4–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

April 26, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue NW., Washington, DC 20220.

Special Request: In order to conduct the customer satisfaction survey described below in May 1995, the Department of the Treasury is requesting Office of Management and Budget (OMB) review and approval of this information collection by May 8, 1995. To obtain a copy of this survey, please write to the IRS Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1432

Project Number: PC:V 95–008–G

Type of Review: Revision

Title: 1995 IRS Customer Satisfaction Survey

Description: The purpose of this survey is to collect information to determine taxpayer opinions about the quality of service provided by the IRS; to determine the relative importance of the various aspects of quality service; and to Executive Order 12862 which requires federal agencies to survey their customers about their satisfaction with existing services and to identify services that these customers desire, the IRS made a commitment to continue to seek customer input through customer surveys. This survey will provide crucial information needed by the IRS to develop and implement effective customer satisfaction measures that meet the Agency's mandate to improve quality service.

Respondents: Individuals or households

Estimated Number of Respondents:

Long Form—1,000

Short Form—3,200

Estimated Burden Hours Per Respondent:

Long Form—15 minutes

Short Form—10 minutes

Frequency of Response: Other

Estimated Total Reporting Burden: 783 hours

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–11081 Filed 5–4–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

April 26, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0314
Form Number: IRS Forms 6466 and 6467
Type of Review: Revision
Title: Transmittal of Magnetic Media of Form W–4
Description: Under Regulation 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (W–4) to the IRS. Transmittal Form 6466, and the continuation sheet Form 6467 are submitted by an authorized agent of the employer who will be reporting submissions of Form W–4 on magnetic media.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 20 minutes
Frequency of Response: Monthly
Estimated Total Reporting Burden: 133 hours
OMB Number: 1545–1014
Form Number: IRS Form 1066 and Schedule Q (form 1066)
Type of Review: Revision
Title: U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return (Form 1066); Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation (Schedule Q)
Description: Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 4,917
Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 1066	Schedule Q (Form 1066)
Recordkeeping	28 hr., 13 min.	6 hr., 13 min.
Learning about the law or the form	6 hr., 41 min.	1 hr., 34 min.
Preparing the form	9 hr., 19 min.	2 hr., 40 min.
Copying, assembling, and sending the form to the IRS	16 min.	16 min.

Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 746,695 hours
OMB Number: 1545–1070
Regulation ID Number: INTL–934–86 Final Regulations TD 8432; and INTL–27–92 Temporary Regulations TD 8223
Type of Review: Extension
Title: Branch Profits Tax (INTL–934–86); and Section 1.884–2T (INTL–27–92)
Description: The regulation explains how to comply with section 884, which imposes a tax on earnings of a foreign corporation's branch that are removed from the branch and which subjects interest paid by the branch, and certain interest deducted by the foreign corporation to tax.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 28,500
Estimated Burden Hours Per Respondent/Recordkeeper: 4 hr., 45 min.
Frequency of Response: Annually
Estimated Total Reporting/Recordkeeping Burden: 12,694 hours
OMB Number: 1545–1379
Form Number: IRS Form 8831
Type of Review: Revision
Title: Excise Taxes on Excess Inclusions of REMIC Residual Interests
Description: Form 8831 is used by a real estate mortgage investment conduit (REMIC) to figure its excise tax liability under Code sections 860E(e)(1), 860E(e)(6), and 860E(e)(7). IRS uses the information to determine the correct tax liability of the REMIC.
Respondents: Business or other for-profit
Estimated Number of Respondents/Recordkeepers: 31
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hr., 32 min.
Learning about the law or the form—1 hr., 29 min.
Preparing and sending the form to the IRS—1 hr., 38 min.
Frequency of Response: On occasion
Estimated Total Reporting/Recordkeeping Burden: 237 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 95–11082 Filed 5–4–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

April 26, 1995.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–1250
Form Number: IRS Form 9356
Type of Review: Revision
Title: Application for Software Developers to Participate in the 1040PC Format for Individual Income Tax Returns
Description: Form 9356 will be filled-in by software developers and submitted to IRS as an application for producing software for the Form 1040PC.
Respondents: Business or other for-profit

Estimated Number of Respondents: 200
Estimated Burden Hours Per Respondent: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 50 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–11083 Filed 5–4–95; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

April 28, 1995.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service (IRS)

OMB Number: 1545–0963
Regulation ID Number: IA–146–81 Final
Type of Review: Extension
Title: Installment Method Reporting by Dealers in Personal Property; Change from Accrual to Installment Method of Reporting
Description: These regulations describe the procedure in which dealers in personal property may adopt or change to the installment method of accounting from another method of accounting.
Respondents: Business or other for-profit, Individuals or households
Estimated Number of Respondents: 50,000
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Other (at the time of the election)
Estimated Total Reporting Burden: 50,000 hours
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 95–11084 Filed 5–4–95; 8:45 am]

BILLING CODE 4830–01–P

Office of Thrift Supervision

Public Information Collection Requirements Submitted to OMB for Review

April 25, 1995 .

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the OTS Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.

OMB Number: 1550–0075
Form Number: Not Applicable
Type of Review: Extension
Title: Loans to Executive Officers, Directors and Principal Shareholders of Savings Associations
Description: The regulation requires savings associations to maintain detailed records of their extensions of credit to executive officers, directors, and principal shareholders. The regulation also requires that savings associations report to OTS all loans to executives and disclose the amount of its extensions of credit following a written request from the public. Indebtedness from correspondent banks must also be disclosed to the board of directors.
Respondents: Savings and Loan Associations and Savings Banks
Estimated Number of Respondents/Recordkeepers: 1,564
Estimated Burden Hours Per Respondents/Recordkeepers: 11 Hrs. Avg.
10 Hours Average per Recordkeeping
1 Hour Average Reporting/Disclosure
Frequency of Response: 4 per Year
Estimated Total Reporting/Recordkeeping Burden: 17,204 Hrs.
Clearance Officer: Colleen M. Devine, (202) 906–6025, Office of Thrift Supervision, 1700 G Street, N. W., Washington, D.C. 20552.
OMB Reviewer: Milo Sunderhauf, (202) 395–7340, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, D.C. 20503.

Cora Prifold Beebe,

Director of Administration.

[FR Doc. 95–11085 Filed 5–4–95; 8:45 am]

BILLING CODE 6720–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Azerbaijan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date, with respect to the Republic of Azerbaijan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the ''Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics'' would enter into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republic of Azerbaijan. An exchange of diplomatic notes with the Republic of Azerbaijan in accordance with Article XVII of the Agreement, as modified by technical adjustments and retitled ''Agreement on Trade Relations between the United States of America and the Republic of Azerbaijan,'' took place in Baku, Azerbaijan on April 21, 1995. Accordingly, the Agreement became effective on April 21, 1995, with respect to the Republic of Azerbaijan, and nondiscriminatory treatment is extended to products of the Republic of Azerbaijan as of April 21, 1995 in accordance with the Agreement and as

provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 95–11126 Filed 5–4–95; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 60, No. 87
Friday, May 5, 1995

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, May 12, 1995, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 21, 1995 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Ohio and Louisiana
VI. Briefing on Public Service Announcements
VII. Future Agenda Items

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8116 at least five (5) days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: May 3, 1995.

Miguel Sapp,

Acting Solicitor.

[FR Doc. 95–11305 Filed 5–3–95; 3:49 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, May 24, 1995.

PLACE: 2033 K St., NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–11207 Filed 5–3–95; 10:58 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10.30 a.m., Wednesday, May 24, 1995.

PLACE: 2033 K St. NW., Washington, DC 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Objectives.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 95–11208 Filed 5–3–95; 10:58 am]

BILLING CODE 6351–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, May 10, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER IINFORMATION CONTACT: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: May 3, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–11224 Filed 5–3–95; 11:27 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., May 15, 1995.

PLACE: 4th Floor, Conference Room, 1250 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. National Finance Center recordkeeping.
2. Benefits administration.
3. Investments.
4. Congressional/agency/participant liaison.
5. Participant communications.
6. Approval of the minutes of the last meeting.
7. Thrift Savings Plan activities report by the Executive Director.
8. Logicon third-party review.
9. Review of additional Thrift Savings Plan funds.
10. Approval of the update of the FY 1995 budget and the FY 1996 estimates.
11. Investment policy review.
12. Status of audit recommendations.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 2, 1995.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 95–11242 Filed 5–3–95; 3:04 pm]

BILLING CODE 6760–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on May 11, 1995. The meeting will commence at 1:30 p.m.

PLACE: Legal Services Corporation, 750 1st Street, N.E., Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of March 17, 1995 Meeting.
3. Consider and Act on Public Comment on Proposed Changes to Part 1604 of the Corporation's Regulations.
4. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: May 2, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–11182 Filed 5–3–95; 8:45 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Finance Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Finance Committee (formerly referred to as the ''Audit and Appropriations Committee'') will meet on May 12, 1995. The meeting will commence at 9:00 a.m.

PLACE: Legal Services Corporation, 750 1st Street NE., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of January 27, 1995 Meeting.
3. Consideration and Review of Budget and Expenses for the Six-Month Period Ending March 31, 1995 and Expense Projections for the Period of April 30, 1994.
4. Consideration of Committee Schedule for Adoption of a Revised Fiscal Year 1995 Consolidated Operating Budget.
5. Consideration of Committee Schedule for Development and Adoption of Fiscal Year 1996 Consolidated Operating Budget.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: May 2, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–11184 Filed 5–3–95; 8:45 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Ad Hoc Structure Committee on Governance Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Ad Hoc Structure Committee on Governance will meet on May 12, 1995. The meeting will commence at 10:00 a.m.

PLACE: The Legal Services Corporation, 750 1st Street NE., The Board Room, Washington, D.C. 20002, (202) 336–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of March 17, 1995 Meeting.
3. Discussion Regarding Roles of Board Committees.
4. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: May 2, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–11185 Filed 5–3–95; 8:45 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on May 12, 1995. The meeting will commence at 1:00 p.m.

PLACE: Legal Services Corporation, 750 1st Street, NE., 11th Floor, Board Room, Washington, DC 20002, (202) 332–8800.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SEASON:

1. Approval of Agenda.
2. Approval of Minutes of March 17, 1995 Meeting.
3. Report on the Veterans Grant Initiative.
4. Consider and Act on Proposal to Transfer Local Program Audit Review Function to the Inspector General.
5. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: May 2, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–11183 Filed 5–3–95; 8:45 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on May 12–13, 1995. The meeting will commence at 3:00 p.m. on May 12th, and at 9:00 a.m. on May 13th.

PLACE: Legal Services Corporation, 750 1st Street, NE., Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed pursuant to a unanimous vote of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may hear and consider the General Counsel's report on litigation in which the Corporation is or may become a party. Finally, the Board may be briefed by the Inspector General on Office of the Inspector General Activities.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of March 17–18, 1995 Meeting.
3. Approval of Minutes of April 11, 1995 Meeting.
4. Approval of Minutes of March 18, 1995 Executive Session.
5. Chairman's and Member's Reports.
6. President's Report.

a. Report on Status of Legislative Matters;
b. Report on LSC Internal Operations.

7. Consider and Act on Proposed Funding Policies to Implement Fiscal Year 1995 Rescission Act.
8. Consider and Act on Proposed Board Financial Disclosure Form and Guidelines.
9. Consider Draft Management Report Responding to the Inspector General's Semiannaul Report for the Period Ending March 31, 1995.
10. Inspector General Report.
11. Consider and Act on Ad Hoc Structure Committee on Government Report.
12. Consider and Act on Finance Committee Report.

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[1] Briefings do not constitute ''meetings'' as defined by the Government in the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

13. Consider and Act on Provision for the Delivery of Legal Services Committee Report.

a. Consider and Act on Committee Recommendation Concerning Transfer of the Local Program Audit Review Function to the Inspector General.

14. Consider and Act on Operations and Regulations Committee Report.

15. Public Comment.

CLOSED SESSION:

16. Consideration of the General Counsel's Report on Litigation.

17. Briefing of Board by the Inspector General on Office of the Inspector General Activities.

OPEN SESSION: (Resumed)

18. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need and accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: May 2, 1995.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 95–11186 Filed 5–3–95; 8:45 am]

BILLING CODE 7050–01–M

federal register

Friday
May 5, 1995

Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 45 and 52

Federal Acquisition Regulation: Use and Charges Clause; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAR Case 91–117]

RIN 9000–AG23

Federal Acquisition Regulation; Use and Charges Clause

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DAR Council) are proposing changes to the coverage ''Contractor Use and Rental of Government Property,'' and the clause ''Use and Charges,'' to clarify the Federal Acquisition Regulation (FAR) coverage pertaining to rental payments for Government-owned real property and equipment. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before July 5, 1995 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th and F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 91–117 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 91–117.

SUPPLEMENTARY INFORMATION:

A. Background

The CAAC and the DAR Council have agreed on changes to FAR parts 45 and 52 as a result of a proposal from the DOD Inspector General to improve and clarify current language relating to rental payments for Government-owned real property and equipment. The proposed rule improves the current language by distinguishing between equipment and real property; clarifying that total equipment costs include such factors as rehabilitation and rebuild costs; clarifying the role of the contracting officer; clarifying the use of credits; specifying that rental rates for real property shall be in accordance with commercial rates as stated in FAR 45.403; and providing for payment of interest on late rental payments.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because only a small amount of property is accountable to contracts with small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601 *et seq.* (FAR case 91–117), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Dated: May 1, 1995.

C. Allen Olson,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 45 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 45 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 45—GOVERNMENT PROPERTY

2. Section 45.402 is amended by revising paragraph (a) to read as follows:

45.402 Authorizing use of Government production and research property.

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The contracting officer shall confirm the availability of the property and coordinate with the administrative contracting officer (ACO) before authorizing its use on either a rental or rent-free basis. The contracting officer shall provide the ACO copies of all correspondence and approvals authorizing contractors' or subcontractors' use of Government production and research property.

* * * * *

3. Section 45.403 is revised to read as follows:

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government real property, plant equipment, special tooling, and special test equipment, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245–9, Use and Charges.

(b) Commercial rates for real property shall be established by using a certified appraisal, if feasible. If such an appraisal is not economically feasible, commercial rates may be established by using Industrial Real Estate Surveys, local rental surveys, or information obtained from the local Chambers of Commerce and local realtors. To calculate rent for real property, commercial rates should be applied against the percentage of commercial sales to total sales or some other equitable basis. The cost of necessary Government-owned support facilities supporting the real property made available on a rental basis should be considered when establishing the commercial rate.

(c) If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property may be determined on a basis other than the clause at 52.245–9, Use and Charges.

(d) The contracting officer shall determine if the contractor may use Government production and research property on a rental basis and shall determine the length of the rental authorization. The administrative contracting officer shall develop the rental agreement and shall ensure the collection of any rent due the Government from the contractor's use of Government production and research property.

4. Section 45.407 is amended by revising paragraph (a) to read as follows:

45.407 Non-Government use of plant equipment.

* * * * *

(a) The contracting officers advance written approval shall be required for

any non-Government use of plant equipment. Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable. The contracting officer shall forward to the administrative contracting officer copies of all approvals for non-Government use of active plant equipment.

* * * * *

PART 52— SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.245–9 is revised to read as follows:

52.245–9 Use and Charges.

As prescribed in 45.302–6(c), insert the following clause:

Use and Charges (Date)

(a) For purposes of this clause, the types of Government property to be rented are divided into two categories, real property (see 45.101) and equipment. Equipment, as used in this clause, consists of plant equipment, special test equipment, and special tooling.

(b) The Contractor may use the real property and equipment without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge; and

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract specifically authorizes such use in writing.

(c) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the real property and equipment to performing contracts and subcontracts of the Contracting Officer having cognizance of the real property and equipment and shall not undertake any work involving the use of the real property and equipment that would interfere with performing existing Government contracts or subcontracts.

(d) If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the real property and equipment for work other than that provided in paragraph (b) of this clause, subject to payment of rental. Authorizing such use of the real property and equipment does not waive any rights of the Government to terminate the Contractor's right to use the real property and equipment.

(e) The rental fee for use of real property and equipment shall be determined in accordance with the following paragraphs:

(1) The basis for computation of the fee shall be established in writing prior to any use of the real property and equipment on a rental basis.

(2) Rental rates for real property and associated fixtures, shall be in accordance with commercial rates as established under section 45.403 of the Federal Acquisition Regulation.

(3) Rental rates for equipment shall be established in accordance with paragraph (f) and TABLE I of this clause.

(4) Rental for real property and equipment shall be calculated on a per month basis. Rental payments shall be made at intervals of not less than one nor more than six months. The rental agreement shall specify the frequency of the payment.

(f) The full monthly equipment rental charge is the monthly rental rate multiplied by the total acquisition cost of the equipment (as defined in subparagraph (f)(1)). The full equipment rental charge for each month shall be reduced by a credit for rent-free use, if applicable. The credit equals the rental amount that would otherwise be properly allocable to the work for which the equipment was used without charge under paragraph (b) of this clause. The credit shall be computed by multiplying the full rental for the rental period by a fraction in which the numerator is the amount of use of the equipment by the Contractor without charge during the period, and the denominator is the total amount of use of the equipment by the Contractor during the period. If the rent for an item is excluded from the total rent computations because the item was used 100 percent of the time for work without charge under paragraph (b) of this clause, the units of measure for that item shall also be excluded from the credit calculations.

(1) The acquisition cost of the equipment shall be the total cost to the Government, including any substantial improvements at Government expense. The Contracting Officer responsible for the equipment will determine the total acquisition cost, to include rebuild, remanufacture or other rehabilitation costs, and enhancements, as well as, transportation and installation costs, if borne by the Government. It does not include the cost of normal maintenance.

(2) For the purpose of computing any credit under this paragraph, the unit in determining the amount of use of the equipment shall be direct labor hours, sales, hours of use, or other unit of measure that will result in an equitable apportionment of the rental charge, as approved by the cognizant Contracting Officer.

(g) The Contractor shall compute the amount of rentals to be paid on real property and equipment for each rental period. Within 90 days after the close of each rental period, the Contractor shall submit to the Contracting Officer a written statement showing the rental calculations for the real property and equipment and listing the amount of rental due the Government. The Contractor shall make available such records and data as are determined by the Contracting Officer to be necessary to verify the information contained in the statement.

(h) Concurrently with the submission of the written statement prescribed by paragraph (g) of this clause, the Contractor shall pay the rental due the Government under this clause. Payment shall be by check made payable to the office designated for contract administration and mailed or delivered to the Administrative Contracting Officer. Receipt and acceptance by the Government of the Contractor's check pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within 180 days following receipt that the amount received is not regarded by the Government as the final amount due.

(i) If the Contractor fails to submit the written statement and the amount due, as required in paragraphs (g) and (h) of this clause, the Contractor shall be liable for interest charges on the amount due, chargeable for each day the statement and rental payment are late. The interest shall be at the ''Renegotiation Board Interest Rate'' (published in the **Federal Register** semiannually on or about January 1st and July 1st for the period in which the amount becomes due). Failure to submit timely statements and/or rent payments may result in the Contracting Officer revoking the Contractor's right to use the real property and/or equipment for commercial purposes.

(j) If the Contractor uses any item of the real property and equipment without authorization, the Contractor shall be liable for payment of 50 percent more than the amount of rental that would have been due had prior authorization been obtained.

(k) The acceptance of any rental payment by the Government under this clause shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use of the real property and/or equipment or any other failure to perform this contract according to its terms.

(1) For equipment of the types covered in Federal Supply Group 34, metal cutting and metal forming machine tools, the following monthly rates shall apply:

TABLE I.—EQUIPMENT RENTAL RATES

Age of equipment	Monthly rental rate
Under 3 years old	3.0 percent.
Over 3 to 8 years old	1.5 percent.
Over 8 years old	1.0 percent.

The age of each item of the equipment shall be based on the year in which it was substantially improved or, if not improved, the year of manufacture, with a birthday on January 1 of each year thereafter. For example, an item of equipment manufactured or improved on July 15, 1992, will be considered to be ''over 1 year old'' on and after January 1, 1993, and ''over 2 years old'' on and after January 1, 1994.

(2) Rental of equipment not covered by (1) above will be computed at a rate of 2 percent per month of use.

(End of clause)

[FR Doc. 95–11176 Filed 5–4–95; 8:45 am]

BILLING CODE 6820–EP–P

federal register

Friday
May 5, 1995

Part III

The President

Presidential Determination No. 95–18 of April 21, 1995

Presidential Determination No. 95–19 of April 21, 1995

Federal Register
Vol. 60, No. 87
Friday, May 5, 1995

Presidential Documents

Title 3—

The President

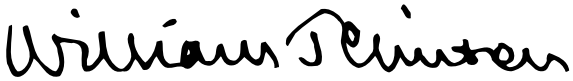
Presidential Determination No. 95–18 of April 21, 1995

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $237,253,000 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the expansion of a power plant in Dalian, Liaoning Province.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 21, 1995.

[FR Doc. 95–11339
Filed 5–4–95; 9:42 am]
Billing code 4710–10–M

Presidential Documents

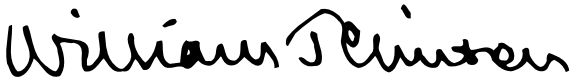
Presidential Determination No. 95–19 of April 21, 1995

Determination Under Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as Amended: People's Republic of China

Memorandum for the Secretary of State

Pursuant to Section 2(b)(2)(D) of the Export-Import Bank Act of 1945, as amended, I determine that it is in the national interest for the Export-Import Bank of the United States to extend a loan in the amount of approximately $278,120,000 to the People's Republic of China in connection with the purchase of U.S. equipment and services for the construction of a power plant in Dandong, Liaoning Province.

You are authorized and directed to report this determination to the Congress and publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 21, 1995.

[FR Doc. 95–11340
Filed 5–4–95; 9:43 am]
Billing code 4710–10–M

federal register

Friday
May 5, 1995

Part IV

The President

Proclamation 6796—Older Americans Month

Federal Register
Vol. 60, No. 87
Friday, May 5, 1995

Presidential Documents

Title 3—

The President

Proclamation 6796 of May 3, 1995

Older Americans Month, 1995

By the President of the United States of America

A Proclamation

Throughout its history, our Nation has benefited immeasurably from the myriad contributions of its older Americans. Our democracy owes its success in great part to the millions of senior citizens who through their work, their volunteer efforts, and their devotion to their families and communities have helped build the foundation of this country.

Each year, America reserves the month of May to pay tribute to the contributions and sacrifices of older Americans and to reaffirm our commitment to preserving and enhancing their quality of life. When Older Americans Month was established in 1963, only 17 million living Americans had reached their 65th birthday. About a third of older Americans lived in poverty, and there were few programs to meet their needs. But Americans were beginning to take a greater interest in their seniors, encouraged by President John F. Kennedy's strong leadership. Today, there are close to 34 million older Americans, and we are better addressing their needs with programs and laws—from Social Security to the Older Americans Act.

The theme for Older Americans Month this year, ''Aging: Generations of Experience,'' recognizes the tremendous experiences and legacy of past generations that we enjoy today. And this year we proudly mark the 30th anniversary of the Older Americans Act. Through the Act's programs, administered by the Administration on Aging, millions of older Americans receive critical home and community-based care services that enable them to continue to live independently within their homes and among their loved ones and friends.

During this Older Americans Month, several thousand delegates from all across America will gather in Washington, D.C., for the historic White House Conference on Aging. And, during this month, we pay tribute to our country's older Americans and to the family members and volunteers who provide care for them. In addition, as we recognize the 50th anniversary of the end of World War II, we pause to give special recognition to our senior citizens who so valiantly fought for our freedoms.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1995, as ''Older Americans Month.'' I call upon individual Americans, representatives of government at all levels, businesses and communities, volunteers and educational institutions to appropriately acknowledge the contributions of all older Americans not only this month but also throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord nineteen hundred and ninety-five, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

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