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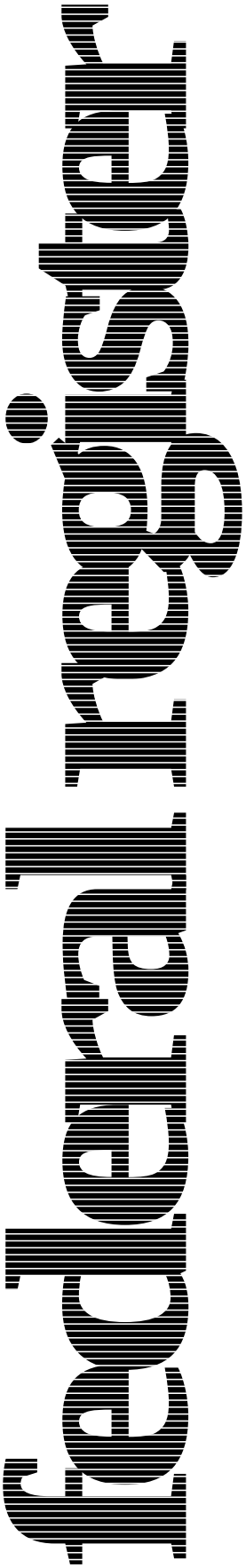

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Federal Register

Vol. 60, No. 125

Thursday, June 29, 1995

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 906 and 944

[Docket No. FV–95–906–1FR]

Oranges Grown in the Lower Rio Grande Valley in Texas and Imported Oranges; Suspension of Regulations for Domestic and Imported Oranges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; suspension.

SUMMARY: This rule suspends the handling regulations for oranges grown in the Lower Rio Grande Valley in Texas and the orange import regulations for the period July 1 through August 31 indefinitely. Currently, the effective period for both domestic and imported oranges is January 1 through December 31 of each year. The purpose of the suspension is to remove unnecessary handling regulations applicable to shipments of Texas oranges for the two month period July and August. The suspension of regulations applicable to imported oranges is necessary under section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT:

Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–690–3670;

or

Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, TX 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This suspension is issued under Marketing Agreement and Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order''. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This suspension is also issued pursuant to section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this suspension in conformance with Executive Order 12866.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This suspension is not intended to have retroactive effect. This action would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this suspension.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 his or her 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on domestic grade, size, quality or maturity regulations established under Federal marketing orders.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in South Texas. In addition, there are approximately 20 importers of oranges subject to the requirements of the orange import requirements. Small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration (13 CFR § 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of these handlers, producers, and importers may be classified as small entities.

Oranges grown in the Lower Rio Grande Valley in Texas are subject to a minimum grade requirement of U.S. No. 2 and a minimum size requirement of 2$^{6}/_{16}$ inches in diameter. These requirements are in effect throughout the year on a continuous basis. The grade and size requirements for oranges grown in the Lower Rio Grande Valley in Texas are found in § 906.365 (7 CFR part 906) under the order. In addition, there are container and pack requirements found in § 906.340.

The Texas Valley Citrus Committee (Committee), the agency responsible for local administration of the order, meets prior to and during each season to review the handling regulations effective on a continuous basis for oranges regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings.

The Department reviews Committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

The Committee met on March 9, 1995, and recommended by a 14 to 1 vote to relax the effective dates of the regulatory period for oranges from continuous to July 15 through August 31, 1995, for one year. Committee members limited the relaxation to one year because of concerns about imported oranges being in commercial channels after August 31, and the need to study the impact of such a change. The Committee acknowledged that the Texas orange requirements only need to be in effect when there are shipments of Texas oranges.

The Committee member who voted in opposition to the recommended change expressed concern about the potential impact imported oranges could have on the marketing of Texas oranges if substandard imports are in commercial channels when the Texas orange shipping season begins. However, with this rule the quality and size regulations for both Texas and imported oranges will be effective when the Texas shipping season begins and all fruit handled during the Texas shipping season will be subject to these requirements.

According to the Committee, Texas orange shipments typically begin in mid to late September and end in mid to late June. The Texas citrus industry has been in a vigorous recovery since the freeze of 1989. Prior to the freeze, shipments of oranges during the 1986/87 season totaled 1,334,548 cartons, shipments for the 1987/88 season totaled 2,240,181 cartons, and shipments for the 1988/89 season totaled 1,220,101 cartons. The 1989/90 shipping season ended in early January 1990 due to the harsh freeze. There was no commercial production or shipments of oranges during the 1990/91 season due to the December 1989 freeze. Orange shipments were minimal during the 1991/92 season as the recovery from the freeze of 1989 was still underway. Shipments for the 1992/93 season totaled approximately 688,000 cartons and shipments in the 1993/94 season approximated 833,000 cartons. The Committee expects the 1994/95 season to be an excellent year for orange production and sales. A review of 1986/87 to 1993/94 Texas orange shipment data revealed that the industry's shipping season consistently runs from September through the following June. This pattern was consistent in both pre-freeze and post-freeze seasons.

The Department reviewed the Committee's recommendation and determined that the quality and size requirements for Texas oranges should be suspended for the period July 1 through August 31, when there are no Texas orange shipments. The regulatory period would begin in September and end in June. There have been production changes over the last five to six seasons. However, as mentioned above, the change in production is a result of the freeze of 1989. The change in production has not resulted in a change in the industry's shipping pattern. The industry's shipping pattern consistently begins in September and ends in June. Although shipping patterns have not changed to date, in the future there may be changes in production. An annual evaluation will be conducted to determine the impact of the suspension on the Texas orange industry. If it is determined that the suspension has been deleterious to the Texas orange industry, necessary modifications will be made.

Minimum grade and size requirements for fresh oranges grown in Texas are in effect under § 906.365 (7 CFR 906.365). This action suspends the provisions of § 906.365 that apply to oranges during the months of July and August.

Since the grade and size requirements for Texas oranges will be effective during the entire Texas shipping season, this change should not have an adverse impact on the Texas orange industry.

Section 8e of the Act provides that when certain domestically produced commodities, including oranges, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e further provides that whenever two or more marketing orders regulating the same agricultural commodity produced in different areas of the United States are concurrently in effect, the imports shall be subject to the requirements applicable to the commodity produced in the area with which the imported commodity is in most direct competition. The Secretary has determined that oranges imported into the United States are in most direct competition with oranges grown in Texas regulated under M.O. No. 906, and has found that the minimum grade and size requirements for imported oranges should be the same as those established for oranges under M.O. No. 906.

Imported oranges are subject to minimum grade and size requirements under § 944.312 (7 CFR part 944.312). These requirements are in effect on a continuous basis because domestic oranges are subject to the minimum grade and size requirements under Marketing Order No. 906 on a continuous basis. This rule suspends section 944.312(a) for the period July 1 through August 31 indefinitely so that it is effective September 1 through June 30, the same time period that is effective in the Texas orange regulation. According to the Department's Market News Branch, U.S. fresh orange imports during the 1993/94 season (beginning November 1) totaled 37.2 million pounds, up nearly 60 percent from the 1992/93 total. The increase is attributable to additional supplies from Australia as compared with the prior season. Australia's largest shipments arrive in July and August. By comparison, U.S. orange imports averaged 48.3 million pounds per season from 1988/89 through 1992/93, ranging from a low of nearly 19 million pounds to 137.3 million pounds in 1990/91 when domestic supplies were reduced following freeze damage to the California crop. In both 1992/93 and 1993/94, Australia was the principal source of fresh orange imports. Other sources of orange imports were the Dominican Republic, whose largest shipments arrive in August and September, Mexico, Israel, and Jamaica. In the 1992/93 season, Australia accounted for 10.1 million pounds, or 43 percent of U.S. fresh orange imports and 20.7 million pounds, or 56 percent of the U.S. total in 1993/94. Mexico is an important source of orange imports during the fall and winter. Imports from Israel are most active during the winter, with imports from other countries widely distributed throughout the season.

This rule relaxes import requirements because the orange import regulations will not be in effect during the months of July and August. This may result in reduced costs to importers. This action should not have an adverse impact on the Texas industry, however, because its shipping season does not begin until September. Domestic producers will not be significantly impacted, since all oranges in commercial channels during the domestic shipping season would be subject to the same minimum grade and size requirements.

The purpose of these changes is to assure that applicable quality requirements are in place only during such periods as needed by the Texas orange industry to provide a consistent supply of oranges of acceptable quality to fresh market outlets.

A proposed rule concerning this suspension was issued on April 18, 1995, and published in the **Federal Register** on April 24, 1995 (60 FR 60059). That rule provided a 20-day comment period which ended May 15, 1995. Six comments were received, four in support and two opposed to the proposed rule.

Comments received in favor of suspending the regulations for domestic and imported oranges as proposed were submitted by Mr. David M. Cain of the Citrus Board of South Australia (Citrus Board), Mr. N. Perry Hansen of Waverly Growers Cooperative, and Mr. Gregory P. Nelson on behalf of DNE World Fruit Sales and Bernard Egan & Company.

Mr. Cain states that the Citrus Board speaks on behalf of almost 900 South Australian citrus growers. It is his contention that the suspension of the regulation during the months of July and August, when under current arrangements, South Australian oranges arrive in the United States, will remove an unnecessary obstacle to their importation. He points out that there are no maximum decay level restrictions imposed on imports of U.S. oranges into Australia. Mr. Hansen supports the suspension, as proposed.

Mr. Nelson stated that, as president of a major exporter of Florida citrus and a major grower of Florida citrus, it is important that all import requirements in the United States be reasonable and fair. He further stated that he expects no adverse consequences on the domestic industry as a result of implementation of the proposed suspension.

Comments in opposition to the suspension of the orange regulations were submitted by Mr. Dwayne Bair, Chairman of the Texas Valley Citrus Commitee and Mr. Bobby F. McKown, Executive Vice President/CEO of Florida Citrus Mutual.

Mr. Bair states that the proposal is contrary to the Committee's recommendation which was to relax the Texas orange regulations for a single season rather than suspending them indefinitely as proposed. The Committee recommended relaxing the effective dates of the regulatory period for Texas oranges from July 15 through August 31, 1995, for one year only. As explained earlier in this rule, past and present production and shipping trends support suspending the orange regulations during the period July 1 through August 31 indefinitely. Also as previously stated an annual evaluation will be conducted to determine the impact of this suspension on the Texas orange industry.

Mr. McKown believes that any reduction in the grade, size, quality, or maturity requirements for fresh oranges, could pose long-term adverse consumer perceptions of the quality of fresh oranges offered for sale in the United States by Florida citrus growers. He further postulates that the suspension of the regulations will further depress returns to Florida citrus growers.

The Department currently has no information to support Mr. McKown's contention that the suspension will depress returns to Florida citrus growers. A review of the impact of the suspension will be conducted annually. If it is determined that the domestic industry has been negatively impacted, appropriate modifications will be proposed to the suspension.

This suspension reflects the Department's appraisal of the need to revise the dates of the regulatory period for imported oranges, as hereinafter set forth, to effectuate the declared policy of the Act.

After thoroughly analyzing the comments received and other available information the Department has concluded that its decision to suspend the orange regulations during the above mentioned period is appropriate.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this suspension, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this suspension should be in effect on July 1, 1995. Also, a 20-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 906

Oranges, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 906 and 944 are amended as follows:

PART 906—ORANGES GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for both 7 CFR parts 906 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 906.365, a new paragraph (a)(7) is added, to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(7) Beginning in 1995, this paragraph (a) is suspended each year from July 1 through August 31 of each year.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.312, paragraph (a) is amended, by adding a sentence at the end of the paragraph to read as follows:

§ 944.312 Orange import regulation.

(a) * * * Effective July 1 through August 31 of each year this paragraph is suspended.

* * * * *

Dated: June 22, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95–15858 Filed 6–26–95; 5:08 pm]

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7 CFR Parts 926 and 944

[Docket No. FV95–926–1FR]

Termination of Marketing Order 926 Covering Tokay Grapes Grown in San Joaquin County, California, and Tokay Grape Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder. For Tokay grapes imported into the United States, this order terminates the applicable Tokay grape import regulation under section 8e of the amended Agricultural Marketing Agreement Act of 1937 (Act). The Secretary of Agriculture has determined that the marketing order no longer tends to effectuate the declared policy of the Act because continuance of the program is no longer supported by growers.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone (202) 720–5127, or Rose Aguayo, California Marketing Field Office, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This termination order is governed by the provisions of 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This termination order is issued under Marketing Order No. 926 (7 CFR part 926), as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California, hereinafter referred to as the ''order.''

This termination order is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under Federal marketing orders.

The Department of Agriculture (Department) is issuing this termination order in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 a 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 date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

In recent seasons, 15 California Tokay grape growers within the production area and 3 handlers have been subject to regulation under the marketing order. There are no known importers of Tokay grapes. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of the Tokay grape handlers and growers may be classified as small entities.

Marketing Order No. 926 has been in effect since August 20, 1940. The marketing order provides for the establishment of grade, size, quality, maturity, volume, pack and container requirements. In addition, the order authorizes marketing research and development projects.

This order terminates the provisions of the marketing order regulating the handling of Tokay grapes grown in San Joaquin County, California, and the rules and regulations issued thereunder.

In recent years, it has been difficult for Tokay grape handlers to find a market for their inventory. Lack of demand and increasing production costs have left growers with few outlets and little incentive to produce Tokay grapes. Acreage has declined due to the lack of a market for fresh shipments of Tokay grapes thereby resulting in vines continually being pulled or re-grafted with other varieties. Wineries are less inclined to use Tokay grapes due to competition from other varietal grapes. The number of handlers and growers has also declined.

The Industry Committee (committee), which is responsible for local administration of the order, held a public meeting on October 21, 1994. Growers and handlers were informed of the time, place and date of the meeting. At the meeting, attendees signed a petition requesting that the marketing order be terminated. The industry recommended that the marketing order be terminated at the end of the 1994–95 fiscal period which is March 31, 1995. The industry recommended terminating the marketing order because only three handlers were shipping to the fresh market. The decline in the number of handlers, increased difficulty in finding outlets for their inventory and increased production costs, led to the request.

All of the 15 growers who signed the petition at the October 21, 1994, public meeting, favored termination. This was 100 percent of the growers who produced for market in 1994. As all known growers in the industry participated in the public meeting, there was 100 percent representation.

Given the high level of grower participation at the public meeting, as well as the demonstrated lack of grower support for the order, these results are a reliable indicator of industry sentiment, and clearly demonstrate that growers do not favor continuation of the order.

Section 926.78(b) of the order provides that the Secretary may terminate or suspend the operation of any or all of the provisions of the order whenever he/she finds that any such provision obstructs or does not tend to effectuate the declared policy of the Act.

Therefore, based on the foregoing considerations, pursuant to section 608c(16)(A)(i) of the Act, and § 926.78(b) of the marketing order, it is found that Marketing Order No. 926, covering Tokay grapes grown in San Joaquin County, California, no longer tends to effectuate the declared policy of the Act and is hereby terminated.

Section 8c(16)(A) of the Act requires the Secretary to notify Congress 60 days in advance of the termination of a Federal marketing order. Congress was so notified on February 24, 1995.

This rule also terminates all regulations in effect under the order pertaining to Tokay grapes grown in San Joaquin County, California which are shipped to domestic and foreign markets. These regulations cover grade, size, quality, maturity, volume, pack and container requirements.

Based on the unanimous recommendation of the industry, the Secretary has determined that all members of the Industry Committee will serve as trustees in order to oversee the administrative affairs of the order.

The trustees will be responsible for completing the order's unfinished

business, including ensuring termination of all outstanding agreements and contracts, and the payment of all obligations. The trustees will be responsible for safeguarding program assets, holding committee records, and arranging for a financial audit to be conducted. All such actions by the trustees are subject to the approval of the Secretary. Those designated as trustees are John Graffigna, Duane M. Jungblut, Jeryl R. Fry, Jr., Burgess R. Mettler, Bruce A. Mettler, James R. Lauchland, and George H. Mettler. The trustees shall continue in their capacity until discharged by the Secretary.

The remainder of the reserves, after immediate expenses are paid, will be held by the trustees to be used to cover unforeseen, outstanding expenses obligated by the trustees.

In accordance with section 8e of the Act (7 U.S.C. 608e), imported Tokay grapes are subject to the same minimum requirements as domestically produced Tokay grapes. With no effective order for domestic Tokay grapes, there is no basis upon which to continue the import regulation as provided for in sections 944.503(a)(3), 944.503(e), (7 CFR 944.503) and 944.605 (7 CFR 944.605). This order revises provisions of § 944.503 Table Grape Import Regulation 4, paragraph(a)(3), by deleting the reference to Tokay grape import requirements for the period April 20 through August 11 of each year. This order also deletes provisions of § 944.503 paragraph(e) which provide import requirements for Tokay grapes imported into the United States during the period, April 20 through August 11. This order redesignates 944.503(f) as 944.503(e) and terminates section 944.605 in its entirety.

This order also revises § 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, and Tokay grapes exempt from grade, size, quality, and maturity requirements. Specifically, § 944.350(a)(1) and (2) are revised by deleting all references to Tokay grapes.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this termination order.

Based on available information, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give additional preliminary notice, or to engage in further public procedure with respect to this action, because (1) this action relieves restrictions on handlers by terminating the provisions of part 926 and applicable provisions of part 944; (2) only three handlers were shipping fruit to the fresh market in fiscal period 1994–1995, and (3) the industry recommended terminating the marketing order at a public meeting held on October 21, 1994.

List of Subjects

7 CFR Part 926

Grapes, Marketing Agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 926 and 944 are amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR parts 926 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 926—[REMOVED]

2. Accordingly, 7 CFR part 926 is removed.

PART 944—FRUITS; IMPORT REGULATIONS

3. § 944.503 is amended by revising paragraph (a) (3), removing (e) and redesignating paragraph(f) as paragraph (e) to read as follows:

§ 944.503 Table Grape Import Regulation 4.

(a) * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 20 through August 15.

* * * * *

§ 944.605 [Removed]

4. § 944.605 is removed.

§ 944.350 [Amended]

5. § 944.350 is amended by removing the words ''Tokay grapes'' wherever they appear.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–15949 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 1230

[No. LS–94–008]

Pork Promotion, Research, and Consumer Information Program—Change in Requirements for Annual Financial Audits

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule and termination order.

SUMMARY: This document terminates the provision of the Pork Promotion, Research, and Consumer Information Order (Order) containing requirements for submission of annual financial reports to the National Pork Board (Board) by organizations that receive less than $10,000 in annual distributed assessments; and issues new requirements in the regulations to implement the Order provisions. The new requirements raise the minimum annual revenue requiring a certified public accountant audit from $10,000 to $30,000. This change facilitates the cost-effective preparation and submission of annual financial reports.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service (AMS), USDA, Room 2606–S, P.O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12778 and Regulatory Flexibility Act

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

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The Pork Promotion, Research, and Consumer Information Act (Act) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers and that the regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Act may not be imposed by a State.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1625 of the Act, a person subject to an

Order may file a petition with the Secretary stating that the Order, a provision of the Order, or an obligation imposed in connection with the Order is not in accordance with law, and requesting a modification of or an exemption from the Order. Petitioners have an opportunity for a hearing on the petition. After the hearing, the Secretary will rule on the petition. The Act provides that the district court of the United States in the district in which a person resides or does business has jurisdiction to review the Secretary's decision, if the petitioner files an appeal not later than 20 days after the date the petitioner receives notice of that decision.

This action has also been reviewed under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

This action allows State Pork Producer Associations (SPPAs) that receive less than $30,000 in assessments annually to submit unaudited annual financial statements to the Board.

Most SPPAs would be classified as small businesses under the RFA. Raising the minimum dollar amount of distributed annual assessments that triggers the requirement that a SPPA must submit an audited annual financial statement from $10,000 to $30,000, minimizes the cost of preparing annual financial reports for smaller SPPAs. The cost savings will result in increased funds available for financing promotion and research programs.

For these reasons the Administrator of AMS has determined that this action will not have a significant economic effect on a substantial number of small entities.

The Act (7 U.S.C. 4801–4819) approved December 23, 1985, authorized the establishment of a national pork promotion, research, and consumer information program. The program was funded by an initial assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessments on import porcine animals, pork, and pork products. That rate was increased to 0.35 percent effective December 1, 1991 (56 FR 51635) and to 0.45 percent effective September 3, 1995, (60 FR 29962). The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383 and amended at 53 FR 1909, 53 FR 30243, 56 FR 4, and 56 FR 51635) and assessments began on November 1, 1986. The Order is administered by the 15-member Board established pursuant to § 1230.50 of the Order.

Section 1230.74(b) of the Order requires that organizations that receive distributions of funds from the Board shall furnish the Board with an annual report audited by a certified public accountant (CPA) of all funds distributed to them.

There are 45 SPPAs as defined in § 1230.25 who receive a percentage of the annual net assessments collected in their State pursuant to § 1230.72(a) and (b). However, § 1230.74(c) provides that SPPAs that receive less than $10,000 in such annual distributions may submit to the Board annual, unaudited financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that such statements are certified by two members of the State association. In addition, State associations that receive less than $10,000 annually must submit to the Board a CPA audited financial statement at least every 5 years. Financial statements of SPPAs that receive less than $2,000 annually in distributed assessments are audited by the Board.

The annual minimum dollar amounts of distributed assessments of $10,000 and $2,000 referenced above were established effective August 11, 1988 (53 FR 30243). These minimum dollar requirements were established to enable the smaller SPPAs that receive relatively small amounts of annual assessments to minimize the cost of CPA audits, which could represent a significant proportion of their total assessments.

Since then, the annual amount of assessments distributed by the Board to the SPPAs has increased as a result of an increase in the assessment rate effective December 1, 1991 (56 FR 51635), and some annual fluctuations in domestic hog prices and in the number of hogs marketed. Consequently, it is the Board's view that the minimum dollar amount now is not high enough to enable a sufficient number of the smaller SPPAs to minimize the costs of preparing and submitting annual financial reports and thus have additional funds available to finance promotion and research projects.

The amount of annual assessments distributed to the 45 SPPAs in 1993 ranged from less than $1,000 to nearly $1.4 million. Seventeen State associations received less than $30,000, and four of those State associations received less than $2,000. To minimize the costs of CPA audits for the 13 State associations whose annual assessments are more than $2,000, but less than $30,000, the Board has recommended that the annual minimum dollar amount of distributed assessments that triggers the requirement of an annual CPA audit be increased from $10,000 to $30,000. The provision that the Board audits financial statements of SPPAs that receive less than $2,000 in annual distributed assessments remains unchanged.

Since the establishment in 1988 of the initial minimum dollar amount of assessments for which a CPA audit is required, neither the Board nor the Department has encountered any problems with SPPAs preparing and submitting financial statements or the safeguarding of assessments. Accordingly, based on the Board's findings and its recommendations discussed above, we terminate the provisions of § 1230.74(c).

Further, we revise the requirements for submission of annual audits based on the Board's recommendations and will publish the revisions in the rules and regulations implementing the Order. The revised requirements provide that SPPAs that receive less than $30,000 in assessments will be required to submit unaudited financial statements to the Board.

On March 13, 1995, AMS published in the **Federal Register** (60 FR 13384) a proposed rule which would terminate the provision of the Order containing requirements for submission of annual financial reports to the Board by organizations that receive less than $10,000 in annual distributed assessments; and issue new requirements in the regulations to implement the Order provisions. The proposal was published with a request for comments by April 12, 1995.

The Department received 14 comments after the publication of the proposed rule. All commenters, including the National Pork Board, the National Pork Producers Council, and 12 State Pork Producer Associations supported changing requirements for submission of annual financial reports to Board stating that the change would allow funds to be more appropriately used for research, promotion and consumer information activities.

After consideration of all relevant material presented with regard to the termination of the provision in the Order as hereinafter set forth, it is found that this provision no longer tends to effectuate the declared policy of the Act.

Accordingly, this final rule terminates the provision of the Order containing requirements for submission of annual financial reports to the Board by organizations that receive less than $10,000 in annual distributed assessments and establishes the new

requirements in rules and regulations as proposed.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

For the reasons set forth in the preamble, 7 CFR part 1230 is amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

2. In § 1230.74, paragraph (b) is revised and (c) is removed to read as follows:

§ 1230.74 Prohibited use of distributed assessments.

* * * * *

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

3. A new § 1230.115 is added to Subpart B—Rules and Regulations to read as follows:

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 95–15948 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–21; Amendment 39–9227; AD 95–10–10]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 95–10–10 applicable to certain Pratt & Whitney (PW) JT8D series turbofan engines that was published in the **Federal Register** on May 22, 1995 (60 FR 27020). The complete listing of affected PW JT8D series turbofan engines in the Applicability paragraph was inadvertently omitted. This document corrects the Applicability paragraph. In all other respects, the original document remains the same.

DATES: Effective July 21, 1995.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to Pratt & Whitney (PW) JT8D series turbofan engines, was published in the **Federal Register** on May 22, 1995 (60 FR 27020). The following correction is needed:

On page 27021, in the third column, in the Applicability paragraph, in the third paragraph, third line, that begins with ''–17, and –17AR turbofan engines. '', it should read ''–17, and –17AR turbofan engines containing front compressor fan hub Part Number (P/N) 817401 with the following serial numbers: J78892 through J80538, K32019 through K34018, L32197 through L34133, or M05722 through M07296; and all serial numbers of fan hubs P/N 594301, 640601, 743301, 749801, 750101, 791801, and 806001. These engines are installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series aircraft.''

Issued in Burlington, MA, on June 14, 1995.

Robert Guyotte,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 95–15557 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–251–AD; Amendment 39–9280; AD 95–12–27]

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires a revision to the input wiring for the flap control unit (FCU). This amendment requires a new systems test for the wiring of the trailing edge flap, and also expands the applicability of the existing AD to include additional airplanes. This amendment is prompted by a report indicating that a wiring error was not detected by the system test required by the existing AD. The actions specified by this AD are intended to prevent the possibility of an all-flaps-up landing due to the loss of control of all flap operations.

DATES: Effective July 31, 1995.

The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995, as listed in the regulations, is approved by the Director of the Federal Register as of July 31, 1995.

The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 10, 1994 (59 FR 35240, July 11, 1994).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification

Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 94–14–21, amendment 39–8970 (59 FR 35240, July 11, 1994), which is applicable to certain Boeing Model 747–400 series airplanes, was published in the **Federal Register** on February 15, 1995 (60 FR 8591). The action proposed to continue to require a revision of the input wiring for the flap control unit (FCU), but would include the addition of a new systems test for the wiring of the trailing edge flap. The action also proposed to expand the applicability of the existing AD to include additional airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer states that the numbers referred to as ''serial numbers'' in paragraphs (a), (b), and (c) of the proposal are designated incorrectly, and requests that the numbers be referred to as ''line numbers.'' The FAA concurs and has revised paragraphs (a), (b), and (c) of the final rule to reflect this change.

One commenter requests that the additional systems test for the wiring, as proposed in paragraph (c) in the AD, be deleted. The commenter states that this testing is unnecessary because the specific procedures provided by Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994 (which is the appropriate source of service information for existing AD 94–14–21), ensure that the wires are installed in the correct pin locations. The FAA does not concur. This AD was prompted by a report from an operator indicating that a wiring error of the landing gear module was discovered after the accomplishment of the wiring systems check required by AD 94–14–21. The FAA has determined that the wiring systems check required by that AD does not provide adequate verification that the wiring modification was made correctly. Therefore, the additional systems check as specified in paragraph (c) of the final rule is required.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 310 Model 747–400 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,080, or $30 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8970 (59 FR 35240, July 11, 1994), and by adding a new airworthiness directive (AD), amendment 39–9280, to read as follows:

95–12–27 Boeing: Amendment 39–9280. Docket 94–NM–251–AD. Supersedes AD 94–14–21, Amendment 39–8970.

Applicability: Model 747–400 series airplanes having line numbers 696 through 1036 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (d) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition; or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any airplane from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Paragraph (a) of this AD merely restates the requirements of paragraph (a) of AD 94–14–21, amendment 39–8970. As allowed by the phrase, ''unless accomplished previously,'' if those requirements of AD 94–14–21 have already been accomplished, this AD does not require that those actions be repeated.

To prevent the possibility of an all-flaps-up landing due to the loss of control of flap operations, accomplish the following:

(a) For airplanes having line numbers 696 through 1019 inclusive, and 1021 through 1026 inclusive: Within 30 days after August 10, 1994 (the effective date of AD 94–14–21, amendment 39–8970), revise the input wiring for the flap control unit (FCU) in accordance with Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, or Revision 2, dated January 12, 1995.

(b) For airplanes having line numbers 1020, and 1027 through 1036 inclusive: Within 30 days after the effective date of this AD, revise the input wiring for the FCU in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(c) For airplanes having line numbers 696 through 1036 inclusive: Within 120 days after the effective date of this AD, perform the additional systems test for the wiring of the trailing edge flap in accordance with Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Aircraft Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The wire systems test and wiring revision shall be done in accordance with Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, and Boeing Service Bulletin 747–27A2346, Revision 2, dated January 12, 1995. The incorporation by reference is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Boeing Service Bulletin 747–27A2346, Revision 1, dated May 19, 1994, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 10, 1994 (59 FR 35240, July 11, 1994). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 31, 1995.

Issued in Renton, Washington, on June 9, 1995.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–14632 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–59–AD; Amendment 39–9289; AD 95–13–09]

Airworthiness Directives; Grob Luft Und Raumfahrt Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Grob Luft Und Raumfahrt (Grob) Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb sailplanes. This action requires inspecting all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling), and repairing any damaged parts. Several occurrences of inner elevator hinges separating during flight operation prompted this AD action. The actions specified by this AD are intended to prevent these hinges from separating, which could result in sailplane flutter and eventual loss of control of the sailplane.

DATES: Effective August 15, 1995.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 15, 1995.

ADDRESSES: Service information that applies to this AD may be obtained from Grob uft und Raumfahrt, D–8939 Mattsies, Germany. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Belderok, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426–6932; facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Grob Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb sailplanes was published in the **Federal Register** on January 18, 1995 (60 FR 3588). The action proposed to require inspecting all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling), and repairing any damaged parts. Accomplishment of the proposed actions would be in accordance with the *III. Procedure* section of Grob Repair Instruction No. 306–27/1 to Service Bulletin TM 306–27/1, dated June 4, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 146 sailplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per sailplane to accomplish the required action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,760. This figure takes into account that no affected sailplane owner/operator has accomplished the required inspection.

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new AD to read as follows:

95–13–09 Grob Luft Und Raumfahrt: Amendment 39–9289; Docket No. 93–CE–59–AD.

Applicability: Models G102 Astir CS, Club Astir IIb, Twin Astir, Speed Astir, Standard Astir II, and Speed Astir IIb Sailplanes (all serial numbers), certificated in any category.

Note 1: This AD applies to each sailplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For sailplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) of this AD to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any sailplane from the applicability of this AD.

Compliance: Required within the next 30 calendar days after the effective date of this AD, unless already accomplished.

To prevent elevator and rudder hinge separation, which could result in sailplane flutter and eventual loss of control of the sailplane, accomplish the following:

(a) Visually inspect all elevator and rudder hinges for damage (delamination, cracks, corrosion, or buckling) in accordance with the *III. Procedure* section of Grob Repair Instruction No. 306–27/1 to Service Bulletin TM 306–27/1, dated June 4, 1991. Prior to further flight, repair any damaged parts in accordance with the service information referenced above.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(d) The inspection required by this AD shall be done in accordance with Grob Repair Instruction No. 306–27/1 to Service Bulletin TM 306–27/1, dated June 4, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Grob uft und Raumfahrt, D–8939 Mattsies, Germany. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39–9289) becomes effective on August 15, 1995.

Issued in Kansas City, Missouri, on June 19, 1995.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 95–15390 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 95–SW–24–AD; Amendment 39–9299; AD 95–11–09]

Airworthiness Directives; Robinson Helicopter Company Model R22 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–11–09 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R22 helicopters by individual letters. This AD requires installation of a placard in the helicopter, and insertion of a prohibition against low-gravity (G) cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. This amendment is prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R22 helicopters. The actions specified by this AD are intended to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–11–09, issued on May 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–24–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5229; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On May 25, 1995, the FAA issued priority letter AD 95–11–09, applicable to Robinson Model R22 helicopters, which requires installation of a placard in the helicopter, and insertion of a prohibition against low-G cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. That action was prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R22 helicopters. This condition, if not corrected, could result in in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R22 helicopters of the same type design, the FAA issued priority letter AD 95–11–09 to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter. The AD requires installation of a placard in the helicopter, in clear view of the pilots, stating that low-G cyclic pushovers are prohibited; and insertion of a prohibition against low-G cyclic pushover maneuvers into SECTION 2, LIMITATIONS, of the Model R22 FAA-approved Rotorcraft Flight Manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 25, 1995, to all known U.S. owners and operators of Robinson Model R22 helicopters. These conditions still exist, and the AD is hereby published in the **Federal**

Register as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–24–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95–11–09 Robinson Helicopter Company: Amendment 39–9299. Docket No. 95–SW–24–AD.

Applicability: Model R22 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Compliance with this AD may be accomplished by completing the ''Compliance Procedure'' of Robinson Helicopter Company R22 Service Bulletin SB–79, dated May 23, 1995, and by incorporating into the Model R22 FAA-approved Rotorcraft Flight Manual the revised pages 2–7 and 2–12, both of which were approved by the FAA on May 19, 1995.

To prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into SECTION 2, LIMITATIONS, of the Model R22 FAA-approved Rotorcraft Flight Manual:

Flight and Maneuver Limitations

Low-G cyclic pushovers are prohibited.

Placards

In clear view of the pilots:

Low-G Pushovers Prohibited

(b) Install a placard that contains the following statement in the helicopter in clear view of the pilots. The size and location of the placard must be such that it is easily readable by the pilots:

Low-G Pushovers Prohibited

Note 3: This placard may be produced locally.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance or Operations Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 95–11–09, issued May 25, 1995, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 23, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–16001 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 95–SW–25–AD; Amendment 39–9300; AD 95–11–10]

Airworthiness Directives; Robinson Helicopter Company Model R44 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 95–11–10 which was sent previously to all known U.S. owners and operators of Robinson Helicopter Company (Robinson) Model R44 helicopters by individual letters. This AD requires installation of a placard in the helicopter, and insertion of a prohibition against low-gravity (G) cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. This amendment is prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R44 helicopters. The actions specified by this AD are intended to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

DATES: Effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by priority letter AD 95–11–10, issued on May 25, 1995, which contained the requirements of this amendment.

Comments for inclusion in the Rules Docket must be received on or before August 28, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 95–SW–25–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (310) 627–5229; fax (310) 627–5210.

SUPPLEMENTARY INFORMATION: On May 25, 1995, the FAA issued priority letter AD 95–11–10, applicable to Robinson Model R44 helicopters, which requires installation of a placard in the helicopter, and insertion of a prohibition against low-G cyclic pushover maneuvers into the LIMITATIONS section of the Rotorcraft Flight Manual. That action was prompted by a recent Federal Aviation Administration (FAA) analysis of the manufacturer's data that indicates a low-G cyclic pushover maneuver may result in mast-bumping on the Robinson Model R44 helicopters. This condition, if not corrected, could result in in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter.

Since the unsafe condition described is likely to exist or develop on other Robinson Model R44 helicopters of the same type design, the FAA issued priority letter AD 95–11–10 to prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter. The AD requires installation of a placard in the helicopter, in clear view of the pilots, stating that low-G cyclic pushovers are prohibited; and insertion of a prohibition against low-G cyclic pushover maneuvers into SECTION 2, LIMITATIONS, of the Model R44 FAA-approved Rotorcraft Flight Manual.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on May 25, 1995, to all known U.S. owners and operators of Robinson Model R44 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 95–SW–25–AD.'' The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 95–11–10 Robinson Helicopter Company: Amendment 39–9300. Docket No. 95–SW–25–AD.

Applicability: Model R44 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required before further flight, unless accomplished previously.

Note 2: Compliance with this AD may be accomplished by completing the ''Compliance Procedure'' of Robinson Helicopter Company R44 Service Bulletin SB–6, dated May 23, 1995, and by incorporating into the Model R44 FAA-approved Rotorcraft Flight Manual the revised pages 2–7 and 2–12, both of which were approved by the FAA on May 19, 1995.

To prevent in-flight main rotor separation or contact between the main rotor blades and the airframe of the helicopter, and subsequent loss of control of the helicopter, accomplish the following:

(a) Insert the following information into SECTION 2, LIMITATIONS, of the Model R44 FAA-approved Rotorcraft Flight Manual:

Flight and Maneuver Limitations

Low-G cyclic pushovers are prohibited.

Placards

In clear view of the pilots:

Low-G Pushovers Prohibited

(b) Install a placard that contains the following statement in the helicopter in clear view of the pilots. The size and location of the placard must be such that it is easily readable by the pilots:

Low-G Pushovers Prohibited

Note 3: This placard may be produced locally.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance or Operations Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on July 14, 1995, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 95–11–10, issued May 25, 1995, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on June 23, 1995.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 95–16002 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 97

[Docket No. 28251; Amdt. No. 1671]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description

of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPs criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include ''or GPS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS procedure is developed, the procedure title will be altered to remove ''or GPS'' from these non-localizer, non-precision instrument approach procedure titles.) Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective SEPT 14, 1995

Prescott, AZ, Ernest A. Love Field, RNAV or GPS RWY 21L, Amdt 2A
Prescott, AZ, Ernest A. Love Field, VOR or GPS RWY 11, Amdt 1
Fresno, CA, Fresno Air Terminal, NDB or GPS RWY 29R, Amdt 23
Orland, CA, Haigh Field, VOR or GPS–A, Amdt 5
Oroville, CA, Oroville Muni, VOR or GPS–A, Amdt 4
Red Bluff, CA, Red Bluff Muni, VOR/DME or GPS RWY 15, Amdt 4
Red Bluff, CA, Red Bluff Muni, VOR or GPS RWY 33, Amdt 5
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, VOR or GPS RWY 27R, Amdt. 10B
Fort Lauderdale, FL, Fort Lauderdale/Hollywood Intl, NDB or GPS RWY 13, Amdt. 14B
Fort Myers, FL, Page Field, NDB or GPS RWY 5, Amdt 5A
Gainesville, FL, Gainesville Regional, RNAV or GPS RWY 28, Amdt 5
Vero Beach, FL, Vero Beach Muni, VOR/DME or GPS RWY 29L, Amdt 2B
Vero Beach, FL, Vero Beach Muni, VOR or GPS RWY 11R, Amdt 12A
Greensboro, GA, Greene County Airpark, NDB or GPS–A, Orig–A
Macon, GA, Middle Georgia Regional, VOR or GPS RWY 13, Amdt 7B
Waycross, GA, Waycross-Ware County, VOR or GPS–A, Amdt 7A
Waycross, GA, Waycross-Ware County, RNAV or GPS RWY 18, Amdt 4A
Seymour, IN, Freeman Muni, NDB or GPS RWY 5, Amdt 3
Fort Madison, IA, Fort Madison Muni, VOR/DME RNAV or GPS RWY 34, Amdt 4
Rantoul, IL, Rantoul National Aviation Center, VOR or GPS RWY 27, Orig
Fort Leavenworth, KS, Sherman AAF, NDB or GPS RWY 33, Amdt 3A CANCELLED
Fort Leavenworth, KS, Sherman AAF, NDB RWY 33, Amdt 3A
Larned, KS, Larned-Pawnee County, NDB or GPS RWY 17, Amdt 3
Meade, KS, Meade Muni, NDB or GPS RWY 17, Amdt 1A
Covington, KY, Cincinnati/Northern Kentucky Intl, NDB or GPS RWY 9, Amdt 13
Covington, KY, Cincinnati/Northern Kentucky Intl, NDB or GPS RWY 18R, Amdt 16
Mayfield, KY, Mayfield Graves County, VOR/DME or GPS–A, Amdt 7
Mayfield, KY, Mayfield Graves County, VOR/DME RNAV or GPS RWY 18, Amdt 3
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB or GPS RWY 3, Amdt 1
Mount Sterling, KY, Mount Sterling-Montgomery County, NDB or GPS RWY 21, Amdt 1
New Orleans, LA, New Orleans Intl (Moisant Field), NDB or GPS RWY 10, Amdt 25A
Ruston, LA, Ruston Muni, VOR/DME or GPS–A, Amdt 11
Slidell, LA, Slidell, NDB or GPS RWY 36, Orig
Menominee, MI, Menominee-Marinette Twin County VOR or GPS–A, Amdt 2A
Hutchinson, MN, Hutchinson Muni-Butler Field, VOR/DME or GPS RWY 33, Amdt 2
Hutchinson, MN, Hutchinson Muni-Butler Field, NDB or GPS RWY 15, Amdt 3
St Paul, MN, St Paul Downtown Holman Fld, NDB or GPS RWY 30, Amdt 7
Winona, MN, Winona Muni-Max Conrad Fld, VOR or GPS–A, Amdt 11B
Jackson MS, Jackson Intl, NDB or GPS RWY 15L, Amdt 4
Mesquite, NV, Mesquite, VOR/DME or GPS–A, Orig
Sand Springs, OK, William R. Pogue Muni, NDB or GPS RWY 35, Amdt 2 CANCELLED
Sand Springs, OK, William R. Pogue Muni, NDB RWY 35, Amdt 2
West Jefferson, NC, Ashe County, NDB or GPS RWY 27, Orig CANCELLED

West Jefferson, NC, Ashe County, NDB RWY 28, Orig
Wallops Island, VA, Wallops Flight Facility, VOR/DME or TACAN or GPS RWY 10, Amdt 3 CANCELLED
Wallops Island, VA, Wallops Flight Facility, VOR/DME or TACAN RWY 10, Amdt 3

[FR Doc. 95–15986 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28249; Amdt. No. 1669]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective July 20, 1995*

Ruston, LA, Ruston Muni, VOR/DME–A, Amdt 11, CANCELLED
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 11L, Amdt 3
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 11R, Amdt 5
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 29L, Amdt 41
Minneapolis, MN, Minneapolis-St Paul Intl/ Wold-Chamberlain, ILS RWY 29R, Amdt 7
Minocqua-Woodruff, WI Lakeland/Noble F. Lee Memorial Field LOC RWY 36, Orig

* * * *Effective August 17, 1995*

Sacramento, CA, Sacramento Metropolitan, NDB RWY 16L, Amdt 1
Sacramento, CA, Sacramento Metropolitan, NDB RWY 16R, Amdt 10
West Palm Beach, FL, North Palm Beach County General Aviation, VOR RWY 8R, Amdt 1
Fort Leavenworth, KS, Sherman AAF, GPS RWY 15, Orig
Fort Leavenworth, KS, Sherman AAF, GPS RWY 33, Orig
Plymouth, MA, Plymouth Muni, NDB RWY 6, Amdt 3
Sand Springs, OK, Williams R. Pogue Muni, GPS RWY 35, Orig

* * * *Effective September 14, 1995*

Hampton, GA, Clayton County-Tara Field, GPS RWY 24, Orig
Glasgow, KY, Glasgow Muni, VOR/DME or GPS RWY 7, Amdt 6
Glasgow, KY, Glasgow Muni, SDF RWY 7, Amdt 9
Glasgow, KY, Glasgow Muni, NDB RWY 7, Amdt 10
Bunkie, LA, Bunkie Muni, NDB RWY 35, Orig
Bay St. Louis, Ms, Stennis Intl, GPS Rwy 36, Orig
Claremont, NH, Claremont Muni, GPS RWY 29, Orig
Morristown, NJ, Morristown Muni, ILS RWY 23, Amdt 9
Brookings, SD, Brookings Muni, VOR or GPS RWY 12, Amdt 11
Brookings, SD, Brookings Muni, VOR or GPS RWY 30 Amdt 10
Brookings, SD, Brookings Muni, ILS/DME RWY 30, Amdt 1
Cleburne, TX, Cleburne Muni, VOR/DME–A OR GPS, Amdt 6
Cleburne, TX, Cleburne Muni, VOR/DME RNAV OR GPS RWY 15, Amdt 3
Cleburne, TX, Cleburne Muni, VOR/DME RNAV OR GPS RWY 33, Amdt 4
Gillette, WY, Gillette-Campbell County, LOC/ DME BC RWY 16, Amdt 2

* * * *Effective Upon Publication*

Gordonsville, VA, Gordonsville Muni, NDB RWY 23, Amdt 1

Note: The FAA published an Amendment in Docket No. *28226,* Amdt. No. *1665* to Part 97 of the Federal Aviation Regulations (Vol *60* FR No. *105* Page *28532;* dated *June 1, 1995*) under Section 97.*27* effective *20 JUL 95,* which is hereby amended as follows:

Hopkinsville, KY, Hopkinsville-Christian County, NDB RWY 26, Amdt 6

should read: NDB or GPS RWY 26, Amdt 6

[FR Doc. 95–15989 Filed 6–28–95; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 28250; Amdt. No. 1670]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace system, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this

amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments require making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedures before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

Issued in Washington, DC on June 16, 1995.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective Upon Publication

FDC Date	State	City	Airport	FDC No.	SIAP
06/01/95	GA	Toccoa	Toccoa RG Letourneau Field	FDC 5/2431	VOR/DME OR GPS RWY 2 ORIG... *NOTAM published in TL95–13 5/2531 should be 5/2431*
06/01/95	NC	Morganton	Morganton-Lenoir	FDC 5/2450	NDB OR GPS RWY 3 AMDT 4...
06/01/95	TN	Gallatin	Sumner County Regional	FDC 5/2437	NDB OR GPS RWY 35 AMDT 1...
06/01/95	TN	Gallatin	Sumner County Regional	FDC 5/2438	VOR/DME OR GPS-A AMDT 1...
06/02/95	CA	Napa	Napa County	FDC 5/2462	LOC RWY 36L AMDT 2A...
06/05/95	VA	Bridgewater	Bridgewater Airpark	FDC 5/2544	NDB OR GPS-A AMDT 4...
06/06/94	ID	Boise	Boise Air Terminal (Gowen Field) ...	FDC 5/2550	ILS RWY 10R, AMDT 8...
06/08/95	NM	Roswell	Roswell Industrial Air Center	FDC 5/2593	LOC BC RWY 3 AMDT 8...

Napa

Napa County

California

LOC RWY 36L AMDT 2A...
FDC Date: 06/02/95
FDC 5/2462/APC/ FI/P NAPA COUNTY, NAPA, CA. LOC RWY 36L AMDT 2A...CHANGE ALL REFERENCES TO LYLLY OM/INT TO LYLLY INT. THIS IS LOC RWY 36L AMDT 2B.

Toccoa

Toccoa RG Letourneau Field

Georgia

VOR/DME OR GPS RWY 2 ORIG...
FDC Date: 06/01/95
NOTAM published in TL95–13 5/2531 should be 5/2431
FDC 5/2431/TOC/ FI/P TOCCOA RG LETOURNEAU FIELD, TOCCOA, GA. VOR/DME OR GPS RWY 2 ORIG...DELETE TERMINAL ROUTE AHN VORTAC TO TESLY TOC 12.5 DME. THIS BECOMES VOR/DME OR GPS RWY 2 ORIG-A.

Boise

Boise Air Terminal (Gowen Field)

Idaho

ILS RWY 10R, AMDT 8...
FDC Date: 06/06/94
FDC 5/2550/BOI/ FI/P BOISE AIR TERMINAL (GOWEN FIELD), BOISE, ID. ILS RWY 10R, AMDT 8...DELETE INITIAL SEGMENT... PARMO INT. I-BOI 29.4 DME TO USTIK LOM, I-BOI 5.4 DME. ADD NOTE... RADAR REQUIRED. THIS BECOMES ILS RWY 10R, AMDT 8A.

Morganton

Morganton-Lenoir

North Carolina

NDB OR GPS RWY 3 AMDT 4...
FDC Date: 06/01/95
FDC 5/2450/MRN/ FI/P MORGANTON-LENOIR, MORGANTON, NC. NDB OR GPS RWY 3 AMDT 4...DELETE HICKORY ALSTG MNMS. DELETE NOTE...OBTAIN LOCAL ALSTG...THRU... HICKORY ALSTG MNMS. ADD NOTE...OBTAIN LOCAL ALSTG ON CTAF; WHEN NOT

RECEIVED USE WILKES COUNTY ALSTG AND INCREASE ALL MDAS 240 FEET AND ALL VIS 3/4 MILE. THIS BECOMES NDB OR GPS RWY 3 AMDT 4A.

Roswell

Roswell Industrial Air Center

New Mexico

LOC BC RWY 3 AMDT 8...
FDC Date: 06/08/95
FDC 5/2593/ROW/ FI/P ROSWELL INDUSTRIAL AIR CENTER, ROSWELL, NM. LOC BC RWY 3 AMDT 8...ALTN MNMS /ILS & LOC/STANDARD-NA WHEN CONTROL TOWER CLOSED. THIS IS LOC BC RWY 3 AMDT 8A.

Gallatin

Sumner County Regional

Tennessee

NDB OR GPS RWY 35 AMDT 1...
FDC Date: 06/01/95
FDC 5/2437/M33/ FI/P SUMNER COUNTY REGIONAL, GALLATIN, TN. NDB OR GPS RWY 35 AMDT 1...CHANGE NOTE TO READ... IF LOCAL ALSTG NOT RECEIVED USE NASHVILLE ALSTG AND INCREASE ALL MDAS 40 FEET. THIS BECOMES NDB OR GPS RWY 35 AMDT 1A.

Gallatin

Sumner County Regional

Tennessee

VOR/DME OR GPS-A AMDT 1...
FDC Date: 06/01/95
FDC 5/2438/M33/ FI/P SUMNER COUNTY REGIONAL, GALLATIN, TN. VOR/DME OR GPS-A AMDT 1...CHANGE NOTE TO READ...IF LOCAL ALSTG NOT RECEIVED USE NASHVILLE ALSTG AND INCREASE ALL MDAS 60 FEET. THIS BECOMES VOR/DME OR GPS-A AMDT 1A.

Bridgewater

Bridgewater Airpark

Virginia

NDB OR GPS-A AMDT 4...
FDC Date: 06/05/95
FDC 5/2544/VBW/ FI/P BRIDGEWATER AIRPARK, BRIDGEWATER, VA. NDB OR GPS-A AMDT 4...DELETE NOTE... PROCEDURE NOT AUTHORIZED AT NIGHT EXCEPT BY PRIOR ARRANGEMENT FOR RUNWAY LIGHT. THIS IS NDB OR GPS-A AMDT 4A.

[FR Doc. 95–15988 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1273

Grants and Cooperative Agreements to State and Local Governments

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

ACTION: Interim rule.

SUMMARY: This interim rule is NASA's adoption of the Common Rule, under Office of Management and Budget Circular No. A–102, on grants and cooperative agreements to state and local governments.

DATES: This rule is effective July 31, 1995. Comments must be received on or before August 28, 1995.

ADDRESSEES: Submit comments to Rich Kall, Contract Management Division (Code HK), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should also be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Rich Kall, (202) 358–0459.

SUPPLEMENTARY INFORMATION:

Background

The NASA Research Grant Handbook (14 CFR part 1260) is the current governing rule for NASA research grants and cooperative agreements. It does not address all types of NASA grants and cooperative agreements. NASA intends to issue regulations on all its grant programs thru new CFR parts. These regulations will cover grants and cooperative agreements with state and local governments, grants and cooperative agreements with educational institutions and other nonprofit organizations, and cooperative agreements with commercial firms.

At this time it is our intention to adopt the Common Rule as it applies under OMB Circular No. A–102. This rule is adopted as an interim rule so that it may be used immediately. The Common Rule has already undergone public comment and NASA is not making significant changes. NASA's interim rule is the same as the common rule adopted by other agencies, for example, the National Science Foundation at 45 CFR part 602, except that the following corrections have been made: (1) In § 1273.3, the definition of ''share'' has been corrected by removing the phrase ''to which the acquisition costs under the grant''; (2) in § 1273.21(e), the phrase ''provide cash or a working capital advance basis'' in the first sentence has been changed to ''provide cash on a working capital advance basis''; (3) in § 1273.30(f), ''budget formal'' has been changed to ''budget format''; (4) in § 1273.32(g), ''third part'' has been changed to ''third party''; (5) in § 1273.36(d)(2)(i)(B), ''compete effectively and for the business'' has been changed to ''compete effectively for the business''; and (6) in § 1273.42(f), ''records Unless required'' has been changed to ''records unless required''.

Regulatory Flexibility Act

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small entities under Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The information collection requirements in this interim rule have been submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h). The Common Rule as adopted by NASA requires certain reporting and recordkeeping of states and local governments in order to determine eligibility for selection and compliance with the rule. The estimated total annual reporting and recordkeeping burden is 1180 hours. The estimated average burden hours per response is 7 hours. The rule proposes quarterly financial reporting and annual reporting for property and technical results. Other reports are required at the conclusion of the agreement or the occurrence of other events. The estimated number of likely respondents is 30 organizations submitting proposals per year resulting in the award of 10 grants per year.

List of Subjects in 14 CFR Part 1273.

Grant programs, Intergovernmental relations.

Tom Luedtke,

Deputy Associate Administrator for Procurement.

Accordingly, 14 CFR part 1273 is added to read as follows:

PART 1273—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

Subpart A—General

Sec.

Subpart B—Pre-Award Requirements

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451, et seq.

Subpart A—General

§1273.1 Purpose and scope of this part.

This subpart establishes uniform administrative rules for Federal grants and cooperative agreements and subawards to State, local and Indian tribal governments.

§1273.2 Scope of subpart.

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

§1273.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

(3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

(1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from ''programmatic'' requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means:

(1) With respect to a grant, the Federal agency, and

(2) With respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for ''grant'' and ''subgrant'' in this section and except where qualified by ''Federal'') a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:

(1) For nonconstruction grants, the SF–269 ''Financial Status Report'' (or other equivalent report);

(2) For construction grants, the SF–271 ''Outlay Report and Request for Reimbursement'' (or other equivalent report).

Federally recognized Indian tribal government means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs.

Government means a State or local government or a federally recognized Indian tribal government.

Grant means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the grantee is not required to account for.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document.

Local government means a county, municipality, city, town, township, local public authority (including any public and Indian housing agency under the United States Housing Act of 1937) school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under state law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

Obligations means the amounts of orders placed, contracts and subgrants awarded, goods and services received, and similar transactions during a given period that will require payment by the

grantee during the same or a future period.

OMB means the United States Office of Management and Budget.

Outlays (expenditures) mean charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of actual cash disbursement for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrued expenditure basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of inkind contributions applied, and the new increase (or decrease) in the amounts owed by the grantee for goods and other property received, for services performed by employees, contractors, subgrantees, subcontractors, and other payees, and other amounts becoming owed under programs for which no current services or performance are required, such as annuities, insurance claims, and other benefit payments.

Percentage of completion method refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's cost incurred.

Prior approval means documentation evidencing consent prior to incurring specific cost.

Real property means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

Share, when referring to the awarding agency's portion of real property, equipment or supplies, means the same percentage as the awarding agency's portion of the acquiring party's total costs under the grant to which the acquisition cost of the property was charged. Only costs are to be counted—not the value of third-party in-kind contributions.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under United States Housing Act of 1937.

Subgrant means an award of financial assistance in the form of money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of ''grant'' in this subpart.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided.

Supplies means all tangible personal property other than ''equipment'' as defined in this part.

Suspension means depending on the context, either

(1) Temporary withdrawal of the authority to obligate grant funds pending corrective action by the grantee or subgrantee or a decision to terminate the grant; or

(2) An action taken by a suspending official in accordance with agency regulations implementing E.O. 12549 to immediately exclude a person from participating in grant transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue.

Termination means permanent withdrawal of the authority to obligate previously-awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee or subgrantee. ''Termination'' does not include:

(1) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(2) Withdrawal of the unobligated balance as of the expiration of a grant;

(3) Refusal to extend a grant or award additional funds, to make a competing or noncompeting continuation, renewal, extension, or supplemental award; or

(4) Voiding of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

Terms of a grant or subgrant mean all requirements of the grant or subgrant, whether in statute, regulations, or the award document.

Third party in-kind contributions mean property or services which benefit a federally assisted project or program and which are contributed by non-Federal third parties without charge to the grantee, or a cost-type contractor under the grant agreement.

Unliquidated obligations for reports prepared on a cash basis mean the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the grantee for which an outlay has not been recorded.

Unobligated balance means the portion of the funds authorized by the Federal agency that has not been obligated by the grantee and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 1273.4 Applicability.

(a) General. Subparts A through D of this part apply to all grants and subgrants to governments, except where inconsistent with Federal statutes or with regulations authorized in accordance with the exception provision of § 1273.6 or:

(1) Grants and subgrants to State and local institutions of higher education or State and local hospitals.

(2) The block grants authorized by the Omnibus Budget Reconciliation Act of 1981 (Community Services; Preventive Health and Health Services; Alcohol, Drug Abuse, and Mental Health Services; Maternal and Child Health Services; Social Services; Low-Income Home Energy Assistance; States' Program of Community Development Block Grants for Small Cities; and Elementary and Secondary Education other than programs administered by the Secretary of Education under Title V, Subtitle D, Chapter 2, Section 583—the Secretary's discretionary grant program) and titles I–III of the Job Training Partnership Act of 1982 and under the Public Health Services Act (Section 1921), Alcohol and Drug Abuse Treatment and Rehabilitation Block Grant and Part C of title V, Mental Health Service for the Homeless Block Grant).

(3) Entitlement grants to carry out the following programs of the Social Security Act:

(i) Aid to Needy Families with Dependent Children (Title IV–A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G); HHS grants for WIN are subject to this part);

(ii) Child Support Enforcement and Establishment of Paternity (Title IV–D of the Act);

(iii) Foster Care and Adoption Assistance (Title IV–E of the Act);

(iv) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act); and

(v) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B).

(4) Entitlement grants under the following programs of The National School Lunch Act:

(i) School Lunch (section 4 of the Act),

(ii) Commodity Assistance (section 6 of the Act),

(iii) Special Meal Assistance (section 11 of the Act),

(iv) Summer Food Service for Children (section 13 of the Act), and

(v) Child Care Food Program (section 17 of the Act).

(5) Entitlement grants under the following programs of The Child Nutrition Act of 1966:

(i) Special Milk (section 3 of the Act), and

(ii) School Breakfast (section 4 of the Act).

(6) Entitlement grants for State Administrative expenses under The Food Stamp Act of 1977 (section 16 of the Act).

(7) A grant for an experimental, pilot, or demonstration project that is also supported by a grant listed in paragraph (a)(3) of this section;

(8) Grant funds awarded under subsection 412(e) of the Immigration and Nationality Act (8 U.S.C. 1522(e)) and subsection 501(a) of the Refugee Education Assistance Act of 1980 (Pub. L. 96–422, 94 Stat. 1809), for cash assistance, medical assistance, and supplemental security income benefits to refugees and entrants and the administrative costs of providing the assistance and benefits;

(9) Grants to local education agencies under 20 U.S.C. 236 through 241–1(a), and 242 through 244 (portions of the Impact Aid program), except for 20 U.S.C. 238(d)(2)(c) and 240(f) (Entitlement Increase for Handicapped Children); and

(10) Payments under the Veterans Administration's State Home Per Diem Program (38 U.S.C. 641(a)).

(b) Entitlement programs. Entitlement programs enumerated above in § 1273.4(a)(3) through (8) are subject to subpart E.

§ 1273.5 Effect on other issuances.

All other grants administration provisions of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with this part are superseded, except to the extent they are required by statute, or authorized in accordance with the exception provision in § 1273.6.

§ 1273.6 Additions and exceptions.

(a) For classes of grants and grantees subject to this part, Federal agencies may not impose additional administrative requirements except in codified regulations published in the **Federal Register**.

(b) Exceptions for classes of grants or grantees may be authorized only by OMB.

(c) Exceptions on a case-by-case basis and for subgrantees may be authorized by the affected Federal agencies.

Subpart B—Pre-Award Requirements

§ 1273.10 Forms for applying for grants.

(a) Scope. (1) This section prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying for grants. This section is not applicable, however, to formula grant programs which do not require applicants to apply for funds on a project basis.

(2) This section applies only to applications to Federal agencies for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged to avoid more detailed or burdensome application requirements for subgrants.

(b) Authorized forms and instructions for governmental organizations. (1) In applying for grants, applicants shall only use standard application forms or those prescribed by the granting agency with the approval of OMB under the Paperwork Reduction Act of 1980.

(2) Applicants are not required to submit more than the original and two copies of preapplications or applications.

(3) Applicants must follow all applicable instructions that bear OMB clearance numbers. Federal agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OMB to the extent required under the Paperwork Reduction Act of 1980. For any standard form, except the SF–424 factsheet, Federal agencies may shade out or instruct the applicant to disregard any line item that is not needed.

(4) When a grantee applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the affected pages need be submitted. Previously submitted pages with information that is still current need not be resubmitted.

§ 1273.11 State plans.

(a) Scope. The statutes for some programs require States to submit plans before receiving grants. Under regulations implementing Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' States are allowed to simplify, consolidate and substitute plans. This section contains additional provisions for plans that are subject to regulations implementing the Executive Order.

(b) Requirements. A State need meet only Federal administrative or programmatic requirements for a plan that are in statutes or codified regulations.

(c) Assurances. In each plan the State will include an assurance that the State shall comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding. For this assurance and other assurances required in the plan, the State may:

(1) Cite by number the statutory or regulatory provisions requiring the assurances and affirm that it gives the assurances required by those provisions,

(2) Repeat the assurance language in the statutes or regulations, or

(3) Develop its own language to the extent permitted by law.

(d) Amendments. A State will amend a plan whenever necessary to reflect:

(1) New or revised Federal statutes or regulations; or

(2) A material change in any State law, organization, policy, or State agency operation. The State will obtain approval for the amendment and its effective date but need submit for approval only the amended portions of the plan.

§ 1273.12 Special grant or subgrant conditions for ''high-risk'' grantees.

(a) A grantee or subgrantee may be considered ''high risk'' if an awarding agency determines that a grantee or subgrantee:

(1) Has a history of unsatisfactory performance, or

(2) Is not financially stable, or

(3) Has a management system which does not meet the management standards set forth in this part, or

(4) Has not conformed to terms and conditions of previous awards, or

(5) Is otherwise not responsible; and if the awarding agency determines that an award will be made, special conditions and/or restrictions shall correspond to the high risk condition and shall be included in the award.

(b) Special conditions or restrictions may include:

(1) Payment on a reimbursement basis;

(2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given funding period;

(3) Requiring additional, more detailed financial reports;

(4) Additional project monitoring;

(5) Requiring the grantee or subgrantee to obtain technical or management assistance; or

(6) Establishing additional prior approvals.

(c) If an awarding agency decides to impose such conditions, the awarding official will notify the grantee or subgrantee as early as possible, in writing, of:

(1) The nature of the special conditions/restrictions;

(2) The reason(s) for imposing them;

(3) The corrective actions which must be taken before they will be removed and the time allowed for completing the corrective actions; and

(4) The method of requesting reconsideration of the conditions/ restrictions imposed.

Subpart C—Post-Award Requirements

Financial Administration

§ 1273.20 Standards for financial management systems.

(a) A State must expand and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its subgrantees and cost-type contractors, must be sufficient to—

(1) Permit preparation of reports required by this part and the statutes authorizing the grant, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records. Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget control. Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

§ 1273.21 Payment.

(a) Scope. This section prescribes the basic standard and the methods under which a Federal agency will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) Basic standard. Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) Advances. Grantees and subgrantees shall be paid in advance, provided they maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the grantee or subgrantee.

(d) Reimbursement. Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. Grantees and subgrantees may also be paid by reimbursement for any construction grant. Except as otherwise specified in regulation, Federal agencies shall not use the percentage of completion method to pay construction grants. The grantee or subgrantee may use that method to pay its construction contractor, and if it does, the awarding agency's payments to the grantee or subgrantee will be based on the grantee's or subgrantee's actual rate of disbursement.

(e) Working capital advances. If a grantee cannot meet the criteria for advance payments described in paragraph (c) of this section, and the Federal agency has determined that reimbursement is not feasible because the grantee lacks sufficient working capital, the awarding agency may provide cash on a working capital advance basis. Under this procedure the awarding agency shall advance cash to the grantee to cover its estimated disbursement needs for an initial period generally geared to the grantee's disbursing cycle. Thereafter, the awarding agency shall reimburse the grantee for its actual cash disbursements. The working capital advance method of payment shall not be used by grantees or subgrantees if the reason for using such method is the unwillingness or inability of the grantee to provide timely advances to the subgrantee to meet the subgrantee's actual cash disbursements.

(f) Effect of program income, refunds, and audit recoveries on payment. (1) Grantees and subgrantees shall disburse repayments to and interest earned on a revolving fund before requesting additional cash payments for the same activity.

(2) Except as provided in paragraph (f)(1) of this section, grantees and subgrantees shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(g) Withholding payments. (1) Unless otherwise required by Federal statute, awarding agencies shall not withhold

payments for proper charges incurred by grantees or subgrantees unless-

(i) The grantee or subgrantee has failed to comply with grant award conditions or

(ii) The grantee or subgrantee is indebted to the United States.

(2) Cash withheld for failure to comply with grant award condition, but without suspension of the grant, shall be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 1273.43(c).

(3) A Federal agency shall not make payment to grantees for amounts that are withheld by grantees or subgrantees from payment to contractors to assure satisfactory completion of work. Payments shall be made by the Federal agency when the grantees or subgrantees actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

(h) Cash depositories. (1) Consistent with the national goal of expanding the opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230.

(2) A grantee or subgrantee shall maintain a separate bank account only when required by Federal-State agreement.

(i) Interest earned on advances. Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), grantees and subgrantees shall promptly, but at least quarterly, remit interest earned on advances to the Federal agency. The grantee or subgrantee may keep interest amounts up to $100 per year for administrative expenses.

§ 1273.22 Allowable costs.

(a) Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the grantees, subgrantees and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the grantee or subgrantee.

(b) Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

For the costs of a	Use the principles in:
State, local or Indian tribal government	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122.
Educational institutions	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR part 31, Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 1273.23 Period of availability of funds.

(a) General. Where a funding period is specified, a grantee may charge to the award only costs resulting from obligations of the funding period unless carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the subsequent funding period.

(b) Liquidation of obligations. A grantee must liquidate all obligations incurred under the award not later than 90 days after the end of the funding period (or as specified in a program regulation) to coincide with the submission of the annual Financial Status Report (SF–269). The Federal agency may extend this deadline at the request of the grantee.

§ 1273.24 Matching or cost sharing.

(a) Basic rule: Costs and contributions acceptable. With the qualifications and exceptions listed in paragraph (b) of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the grantee, subgrantee or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by others cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

(b) Qualifications and exceptions—(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a grantee or subgrantee from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in § 1273.25, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement. (This use of general program income is described in § 1273.25(g).)

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of grantees and subgrantee or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization

uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions. (i) Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(ii) Some third party in-kind contributions are goods and services that, if the grantee, subgrantee, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the grantee, subgrantee, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

(iii) A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(A) An increase in the services or property provided under the contract (without additional cost to the grantee or subgrantee) or

(B) A cost savings to the grantee or subgrantee.

(iv) The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

(c) Valuation of donated services—(1) Volunteer services. Unpaid services provided to a grantee or subgrantee by individuals will be valued at rates consistent with those ordinarily paid for similar work in the grantee's or subgrantee's organization. If the grantee or subgrantee does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a grantee, subgrantee, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (c)(1) of this section applies.

(d) Valuation of third party donated supplies and loaned equipment or space. (1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

(e) Valuation of third party donated equipment, buildings, and land. If a third party donates equipment, buildings, or land, and title passes to a grantee or subgrantee, the treatment of the donated property will depend upon the purpose of the grant or subgrant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant or subgrant is to assist the grantee or subgrantee in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching,

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, paragraphs (e)(2)(i) and (ii) of this section apply:

(i) If approval is obtained from the awarding agency, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the grant agreement may require that the approval be obtained from the Federal agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

(ii) If approval is not obtained under paragraph (e)(2)(i) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the grantee or subgrantee. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in § 1273.22, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

(f) Valuation of grantee or subgrantee donated real property for construction/acquisition. If a grantee or subgrantee donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost sharing or matching.

(g) Appraisal of real property. In some cases under paragraphs (d), (e) and (f) of this section, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the Federal agency may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the grantee. This requirement will also be imposed by the grantee on subgrantees.

§ 1273.25 Program income.

(a) General. Grantees are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Except as otherwise provided in regulations of the Federal agency, program income does not include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

(b) Definition of program income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

(c) Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incident to the generation of program income may be deducted from gross income to determine program income.

(d) Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a grantee or subgrantee are not program income unless the revenues are specifically identified in the grant agreement or Federal agency regulations as program income.

(e) Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a grantee or subgrantee is program income only if the revenues are specifically identified in the grant

agreement or Federal agency regulations as program income. (See § 1273.34).

(f) Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of §§ 1273.31 and 1273.32.

(g) Use of program income. Program income shall be deducted from outlays which may be both Federal and non-Federal as described below, unless the Federal agency regulations or the grant agreement specify another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income. When Federal agencies authorize the alternatives in paragraphs (g) (2) and (3) of this section, program income in excess of any limits stipulated shall also be deducted from outlays.

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless the Federal agency authorizes otherwise. Program income which the grantee did not anticipate at the time of the award shall be used to reduce the Federal agency and grantee contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by the Federal agency and the grantee. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

(h) Income after the award period. There are no Federal requirements governing the disposition of program income earned after the end of the award period (i.e., until the ending date of the final financial report, see paragraph (a) of this section), unless the terms of the agreement or the Federal agency regulations provide otherwise.

§ 1273.26 Non-Federal audit.

(a) Basic rule. Grantees and subgrantees are responsible for obtaining audits in accordance with the Single Audit Act of 1984 (31 U.S.C. 7501–7507) and Federal agency implementing regulations. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) Subgrantees. State or local governments, as those terms are defined for purposes of the Single Audit Act, that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subgrantee shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A–110, ''Uniform Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations'' have met the audit requirement. Commercial contractors (private forprofit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A–110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee's own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) Auditor selection. In arranging for audit services, § 1273.36 shall be followed.

Changes, Property, and Subawards

§ 1273.30 Changes.

(a) General. Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) Relation to cost principles. The applicable cost principles (see § 1273.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) Budget changes—(1) Nonconstruction projects. Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a nonconstruction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative† transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency's share exceeds $100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) Construction projects. Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) Combined construction and nonconstruction projects. When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any fund or budget transfer from nonconstruction to construction or vice versa.

(d) Programmatic changes. Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of § 1273.36

but does not apply to the procurement of equipment, supplies, and general support services.

(e) Additional prior approval requirements. The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) Requesting prior approval. (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see § 1273.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 1273.31 Real property.

(a) Title. Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) Use. Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purpose, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(c) Disposition. When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) Retention of title. Retain after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sale of property. Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the grant is still active, the net proceeds from sale may be offset against the original cost of the property. When a grantee or subgrantee is directed to sell property, sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer of title. Transfer title to the awarding agency or to a third-party designated/approved by the awarding agency. The grantee or subgrantee shall be paid an amount calculated by applying the grantee or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§ 1273.32 Equipment.

(a) Title. Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) States. A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.

(c) Use. (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.

(2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in § 1273.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.

(4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.

(d) Management requirements. Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage or theft shall be investigated.

(4) Adequate maintenance procedures must be developed to keep the property in good condition.

(5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.

(e) Disposition. When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

(1) Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, or sold or otherwise disposed of with no further obligation to the awarding agency.

(2) Items of equipment with a current per unit fair market value in excess of $5,000 may be retained or sold and the

awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.

(3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) Federal equipment. In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) Right to transfer title. The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow § 1273.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§ 1273.33 Supplies.

(a) Title. Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) Disposition. If there is a residual inventory of unused supplies exceeding $5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

§ 1273.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

§ 1273.35 Subawards to debarred and suspended parties.

Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.''

§ 1273.36 Procurement.

(a) States. When procuring property and services under a grant, a State will allow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) Procurement standards. (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees an subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item or nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the

significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) Competition. (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of § 1273.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(d) Methods of procurement to be followed—(1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000). If small purchase procurements are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by* sealed bids *(formal advertising*). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in § 1273.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such

discounts are usually taken advantage of: and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) *Procurement by competitive proposals.* The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) Contracting with small and minority firms, women's business enterprise and labor surplus area firms. (1) The grantee and subgrantee will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

(2) Affirmative steps shall include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (e)(2) (i) through (v) of this section.

(f) Contract cost and price. (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see § 1273.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) Awarding agency review. (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a ''brand name'' product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis;

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures, regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) Bonding requirements. For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) Contract provisions. A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR part 60). (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a–7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of $2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of $2000, and in excess of $2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of $100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

§ 1273.37 Subgrants.

(a) States. States shall follow state law and procedures when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. States shall:

(1) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations;

(2) Ensure that subgrantees are aware of requirements imposed upon them by Federal statute and regulation;

(3) Ensure that a provision for compliance with § 1273.42 is placed in every cost reimbursement subgrant; and

(4) Conform any advances of grant funds to subgrantees substantially to the same standards of timing and amount that apply to cash advances by Federal agencies.

(b) All other grantees. All other grantees shall follow the provisions of this part which are applicable to

awarding agencies when awarding and administering subgrants (whether on a cost reimbursement or fixed amount basis) of financial assistance to local and Indian tribal governments. Grantees shall:

(1) Ensure that every subgrant includes a provision for compliance with this part;

(2) Ensure that every subgrant includes any clauses required by Federal statute and executive orders and their implementing regulations; and

(3) Ensure that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

(c) Exceptions. by their own terms, certain provisions of this part do not apply to the award and administration of subgrants:

(1) Section 1273.10;

(2) Section 1273.11;

(3) The letter-of-credit procedures specified in Treasury Regulations at 31 CFR part 205, cited in § 1273.21; and

(4) Section 1273.50.

Reports, Records, Retention, and Enforcement

§ 1273.40 Monitoring and reporting program performance.

(a) Monitoring by grantees. Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity.

(b) Nonconstruction performance reports. The Federal agency may, if it decides that performance information available from subsequent applications contains sufficient information to meet its programmatic needs, require the grantee to submit a performance report only upon expiration or termination of grant support. Unless waived by the Federal agency this report will be due on the same date as the final Financial Status Report.

(1) Grantees shall submit annual performance reports unless the awarding agency requires quarterly or semi-annual reports. However, performance reports will not be required more frequently than quarterly. Annual reports shall be due 90 days after the grant year, quarterly or semi-annual reports shall be due 30 days after the reporting period. The final performance report will be due 90 days after the expiration or termination of grant support. If a justified request is submitted by a performance report. Additionally, requirements for unnecessary performance reports may be waived by the Federal agency.

(2) Performance reports will contain, for each grant, brief information on the following:

(i) A comparison of actual accomplishments to the objectives established for the period. Where the output of the project can be quantified, a computation of the cost per unit of output may be required if that information will be useful.

(ii) The reasons for slippage if established objectives were not met.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(3) Grantees will not be required to submit more than the original and two copies of performance reports.

(4) Grantees will adhere to the standards in this section in prescribing performance reporting requirements for subgrantees.

(c) Construction performance reports. For the most part, on-site technical inspections and certified percentage-of-completion data are relied on heavily by Federal agencies to monitor progress under construction grants and subgrants. The Federal agency will require additional formal performance reports only when considered necessary, and never more frequently than quarterly.

(d) Significant developments. Events may occur between the scheduled performance reporting dates which have significant impact upon the grant or subgrant supported activity. In such cases, the grantee must inform the Federal agency as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more beneficial results than originally planned.

(e) Federal agencies may make site visits as warranted by program needs.

(f) Waivers, extensions. (1) Federal agencies may waive any performance report required by this part if not needed.

(2) The grantee may waive any performance report from a subgrantee when not needed. The grantee may extend the due date for any performance report from a subgrantee if the grantee will still be able to meet its performance reporting obligations to the Federal agency.

§ 1273.41 Financial reporting.

(a) General. (1) Except as provided in paragraphs (a) (2) and (5) of this section, grantees will use only the forms specified in paragraphs (a) through (e) of this section, and such supplementary or other forms as may from time to time be authorized by OMB, for:

(i) Submitting financial reports to Federal agencies, or

(ii) Requesting advances or reimbursements when letters or credit are not used.

(2) Grantees need not apply the forms prescribed in this section in dealing with their subgrantees. However, grantees shall not impose more burdensome requirements on subgrantees.

(3) Grantees shall follow all applicable standard and supplemental Federal agency instructions approved by OMB to the extent required under the Paperwork Reduction Act of 1980 for use in connection with forms specified in paragraphs (b) through (e) of this section. Federal agencies may issue substantive supplementary instructions only with the approval of OMB. Federal agencies may shade out or instruct the grantee to disregard any line item that the Federal agency finds unnecessary for its decisionmaking purposes.

(4) Grantees will not be required to submit more than the original and two copies of forms required under this part.

(5) Federal agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Federal agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed forms.

(6) Federal agencies may waive any report required by this section if not needed.

(7) Federal agencies may extend the due date of any financial report upon receiving a justified request from a grantee.

(b) Financial Status Report—(1) Form. Grantees will use Standard Form 269 or 269A, Financial Status Report, to report the status of funds for all nonconstruction grants and for construction grants when required in accordance with paragraph § 1273.41(e)(2)(iii) of this section.

(2) Accounting basis. Each grantee will report program outlays and program income on a cash or accrual basis as prescribed by the awarding agency. If the Federal agency requires accrual information and the grantee's accounting records are not normally kept on the accrual basis, the grantee

shall not be required to convert its accounting system but shall develop such accrual information through and analysis of the documentation on hand.

(3) Frequency. The Federal agency may prescribe the frequency of the report for each project or program. However, the report will not be required more frequently than quarterly. If the Federal agency does not specify the frequency of the report, it will be submitted annually. A final report will be required upon expiration or termination of grant support.

(4) Due date. When reports are required on a quarterly or semiannual basis, they will be due 30 days after the reporting period. When required on an annual basis, they will be due 90 days after the grant year. Final reports will be due 90 days after the expiration or termination of grant support.

(c) Federal Cash Transactions Report—(1) Form. (i) For grants paid by letter or credit, Treasury check advances or electronic transfer of funds, the grantee will submit the Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a, unless the terms of the award exempt the grantee from this requirement.

(ii) These reports will be used by the Federal agency to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment provided that the information to be submitted is not changed in substance.

(2) Forecasts of Federal cash requirements. Forecasts of Federal cash requirements may be required in the ''Remarks'' section of the report.

(3) Cash in hands of subgrantees. When considered necessary and feasible by the Federal agency, grantees may be required to report the amount of cash advances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(4) Frequency and due date. Grantees must submit the report no later than 15 working days following the end of each quarter. However, where an advance either by letter of credit or electronic transfer of funds is authorized at an annualized rate of one million dollars or more, the Federal agency may require the report to be submitted within 15 working days following the end of each month.

(d) Request for advance or reimbursement—(1) Advance payments. Requests for Treasury check advance payments will be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form will not be used for drawdowns under a letter of credit, electronic funds transfer or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) Reimbursements. Requests for reimbursement under nonconstruction grants will also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see paragraph (e)(1) of this section.)

(3) The frequency for submitting payment requests is treated in § 1273.41(b)(3).

(e) Outlay report and request for reimbursement for construction programs. (1) Grants that support construction activities paid by reimbursement method.

(i) Requests for reimbursement under construction grants will be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Federal agencies may, however, prescribe the Request for Advance or Reimbursement form, specified in § 1273.41(d), instead of this form.

(ii) The frequency for submitting reimbursement requests is treated in § 1273.41(b)(3).

(2) Grants that support construction activities paid by letter of credit, electronic funds transfer or Treasury check advance.

(i) When a construction grant is paid by letter of credit, electronic funds transfer or Treasury check advances, the grantee will report its outlays to the Federal agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The Federal agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 1273.41(b) (3) and (4).

(ii) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances will be requested on the form specified in § 1273.41(d).

(iii) The Federal agency may substitute the Financial Status Report specified in § 1273.41(b) for the Outlay Report and Request for Reimbursement for Construction Programs.

(3) Accounting basis. The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 1273.41(b)(2).

§ 1273.42 Retention and access requirements for records.

(a) Applicability. (1) This section applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees which are:

(i) Required to be maintained by the terms of this part, program regulations or the grant agreement, or

(ii) Otherwise reasonably considered as pertinent to program regulations or the grant agreement.

(2) This section does not apply to records maintained by contractors or subcontractors. For a requirement to place a provision concerning records in certain kinds of contracts, see § 1273.36(i)(10).

(b) Length of retention period. (1) Except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section.

(2) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(3) To avoid duplicate recordkeeping, awarding agencies may make special arrangements with grantees and subgrantees to retain any records which are continuously needed for joint use. The awarding agency will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the grantee or subgrantee.

(c) Starting date of retention period—(1) General. When grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. However, if grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report. If an expenditure report has been waived, the retention period starts on the day the report would have been due.

(2) Real property and equipment records. The retention period for real property and equipment records starts

from the date of the disposition or replacement or transfer at the direction of the awarding agency.

(3) Records for income transactions after grant or subgrant support. In some cases grantees must report income after the period of grant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the grantee's fiscal year in which the income is earned.

(4) Indirect cost rate proposals, cost allocations plans, etc. This paragraph applies to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal plan, or computation and its supporting records starts from end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(d) Substitution of microfilm. Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

(e) Access to records—(1) Records of grantees and subgrantees. The awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.

(2) Expiration of right of access. The rights of access in this section must not be limited to the required retention period but shall last as long as the records are retained.

(f) Restrictions on public access. The Federal Freedom of Information Act (5 U.S.C. 552) does not apply to records unless required by Federal, State, or local law, grantees and subgrantees are not required to permit public access to their records.

§ 1273.43 Enforcement.

(a) Remedies for noncompliance. If a grantee or subgrantee materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the award agency may take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action by the awarding agency.

(2) Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance,

(3) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program,

(4) Withhold further awards for the program, or

(5) Take other remedies that may be legally available.

(b) Hearings, appeals. In taking an enforcement action, the awarding agency will provide the grantee or subgrantee an opportunity for such hearing, appeal, or other administrative proceeding to which the grantee or subgrantee is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of grantee or subgrantee resulting from obligations incurred by the grantee or subgrantee during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other grantee or subgrantee costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

(1) The costs result from obligations which were properly incurred by the grantee or subgrantee before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, are noncancellable, and,

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude grantee or subgrantee from being subject to ''Debarment and Suspension'' under E.O. 12549 (see § 1273.35).

§ 1273.44 Termination for convenience.

Except as provided in § 1273.43 awards may be terminated in whole or in part only as follows:

(a) By the awarding agency with the consent of the grantee or subgrantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(b) By the grantee or subgrantee upon written notification to the awarding agency, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, the awarding agency determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the awarding agency may terminate the award in its entirety under either § 1273.43 or paragraph (a) of this section.

Subpart D—After-The-Grant Requirements

§ 1273.50 Closeout.

(a) General. The Federal agency will close out the award when it determines that all applicable administrative actions and all required work of the grant has been completed.

(b) Reports. Within 90 days after the expiration or termination of the grant, the grantee must submit all financial, performance, and other reports required as a condition of the grant. Upon request by the grantee, Federal agencies may extend this timeframe. These may include but are not limited to:

(1) Final performance or progress report.

(2) Financial Status Report (SF 269) or Outlay Report and Request for Reimbursement for Construction Programs (SF–271) (as applicable).

(3) Final request for payment (SF–270) (if applicable).

(4) Invention disclosure (if applicable).

(5) Federally-owned property report: In accordance with § 1273.32(f), a grantee must submit an inventory of all federally owned property (as distinct from property acquired with grant funds) for which it is accountable and request disposition instructions from the Federal agency of property no longer needed.

(c) Cost adjustment. The Federal agency will, within 90 days after receipt of reports in paragraph (b) of this section, make upward or downward adjustments to the allowable costs.

(d) Cash adjustments. (1) The Federal agency will make prompt payment to

the grantee for allowable reimbursable costs.

(2) The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

§ 1273.51 Later disallowances and adjustments.

The closeout of a grant does not affect:

(a) The Federal agency's right to disallow costs and recover funds on the basis of a later audit or other review;

(b) The grantee's obligation to return any funds due as a result of later refunds, corrections, or other transactions;

(c) Records retention as required in § 1273.42;

(d) Property management requirements in §§ 1273.31 and 1273.32; and

(e) Audit requirements in § 1273.26.

§ 1273.52 Collection of amounts due.

(a) Any funds paid to a grantee in excess of the amount to which the grantee is finally determined to be entitled under the terms of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand, the Federal agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursement,

(2) Withholding advance payments otherwise due to the grantee, or

(3) Other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Entitlements (Reserved)

[FR Doc. 95–15898 Filed 6–28–95; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 94F–0222]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Calcium Disodium EDTA

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 calcium disodium EDTA (ethylenediaminetetraacetate) to promote color retention for canned, cooked fava beans. This action is in response to a petition filed by Ramico Foods, Inc.

DATES: Effective June 29, 1995; written objections and requests for a hearing by July 31, 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: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 14, 1994 (59 FR 35933), FDA announced that a food additive petition (FAP 3A4404) had been filed by Ramico Foods, Inc., 8245 Le Creusot, St-Leonard, Quebec, CANADA H1P 2A2. The petition proposed to amend the food additive regulations in § 172.120 *Calcium disodium EDTA* (21 CFR 172.120) to provide for the safe use of calcium disodium EDTA to promote color retention for canned, cooked fava beans.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed food additive use of calcium disodium EDTA is safe, and that § 172.120 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 July 31, 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 objections 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 172

Food additives, Reporting and recordkeeping requirements.

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 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: Secs. 201, 401, 402, 409, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 348, 371, 379e).

2. Section 172.120 is amended in the table in paragraph (b)(1) by alphabetically adding a new entry to read as follows:

§ 172.120 Calcium disodium EDTA.

* * * * *

(b) * * *

(1) * * *

Food	Limitation (parts per million)	Use
* * * * *		
Fava beans (cooked canned).	365	Promote color retention.
* * * * *		

* * * * *

Dated: June 15, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15924 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 178

[Docket No. 93F–0033]

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 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant for high density polyethylene intended for use in food-contact articles. This action is in response to a petition filed by Sumitomo Chemical America, Inc.

DATES: Effective June 29, 1995; written objections by July 31, 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: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 12, 1993 (58 FR 13604), FDA announced that a food additive petition (FAP 3B4358) 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 3,9-bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane as an antioxidant for polyethylene complying with § 177.1520 *Olefin polymers* (21 CFR 177.1520) intended for use in food-contact articles.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that data in the petition support the safe use of the additive only in high density polyethylene with a minimum density of 0.94, and under limited use conditions. Therefore, the use of the additive has been limited in § 178.2010(b) consistent with these conditions.

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 July 31, 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 objections 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) by revising the ''Limitations'' for the entry ''3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1 dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane'' to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * * * * *
3,9-Bis[2-{3-(3-*tert*-butyl-4-hydroxy-5-methylphenyl)propionyloxy}-1,1-dimethylethyl]-2,4,8,10-tetraoxaspiro[5.5]undecane (CAS Reg. No. 90498–90–1).	For use only: 1. At levels not to exceed 0.2 percent by weight of polypropylene complying with § 177.1520(c), item 1.1 of this chapter. The finished polymer is to be used in contact with food only under conditions of use D through H described in Table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.3 percent by weight of polyethylene complying with § 177.1520(c) of this chapter, item 2.1, provided that the polymer has a minimum density of 0.94 grams per cubic centimeter and is used in contact with food only under conditions of use D through G described in Table 2 of § 176.170(c) of this chapter.
* * *	* * * * * * *

Dated: June 15, 1995.

Janice F. Oliver,

Deputy Director for Systems and Support, Center for Food Safety and Applied Nutrition.

[FR Doc. 95–15922 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 442

[Docket No. 94N–0132]

Antibiotic Drugs; Cefotetan and Cefotetan Disodium Injection; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is technically amending a final rule that appeared in the **Federal Register** of May 25, 1994 (59 FR 26939). The document amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new bulk form of cefotetan. The agency received a comment on the final rule that pointed out, among other things, that the correct name of the antibiotic is cefotetan disodium. This document corrects those errors.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: James M. Timper, Center for Drug Evaluation and Research (HFD–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6714.

SUPPLEMENTARY INFORMATION: As published, the final regulation contains errors that may prove to be misleading and are in need of clarification. The name of the antibiotic is ''cefotetan disodium'' not ''cefotetan sodium.'' The calculation for determining cefotetan concentration in the finished dosage form was published incorrectly, and an additional sample preparation, potassium bromide discs, can be used also. Accordingly the agency is amending 21 CFR 442.52 to correct those errors.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR part 442 continues to read as follows:

Authority: Sec. 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357).

2. Section 442.52 is amended by revising paragraphs (b)(1)(iv) and (b)(3) to read as follows:

§ 442.52 Cefotetan.

(b) * * *

(1) * * *

(iv) *Calculation*. Calculate the micrograms of cefotetan per milligram of sample as follows:

$$\text{Micrograms of cefotetan per milligram} = \frac{A_U \times P_S \times V_f \times 1{,}000}{A_S \times V_s}$$

where:

A_U = Area of the cefotetan peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

A_S = Area of the cefotetan peak in the chromatogram of the cefotetan working standard;

P_S = Cefotetan activity in the cefotetan working standard solution in micrograms per milliliter;

V_f = Volume of flask used to dilute standard; and

V_s = Volume of sample diluted.

* * * * *

(3) *Identity*. Proceed as directed in § 436.211 of this chapter using the potassium bromide discs prepared as described in § 436.211(b)(1) of this chapter or the mineral oil mull prepared as described in § 436.211(b)(2) of this chapter.

Dated: May 9, 1995.

Murray M. Lumpkin,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 95–15923 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 637

[FHWA Docket No. 94–13]

RIN 2125–AD35

Quality Assurance Procedures for Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is revising its regulations that establish general

requirements for quality assurance procedures for construction on Federal-aid highway projects. The rule provides more flexibility than the existing regulation. The rule allows the use of contractor test results in making the acceptance decision and allows the use of consultants in the independent assurance program and verification sampling and testing. The regulation requires testers and laboratories to be qualified. However, it gives the States the flexibility to establish those qualifications. The revisions will clarify existing policy and procedures and provide additional guidance on the use of contractor-supplied test results in acceptance plans.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rafalowski, Office of Engineering, HNG–23, 202–366–1571; or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, 202–366–0780; Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday Through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The current regulations on sampling and testing of materials and construction appear in 23 CFR Part 637, Construction Inspection and Approval. These regulations were last revised in January 1987. The regulations were written using the concept of the State performing all the sampling and testing, which had been the traditional approach to sampling and testing. The regulations do not address the use of contractor testing. As a result, a number of questions arose in those States which were using contractor testing in their quality control/quality assurance (QC/QA) programs.

The existing regulations do not recognize the use of contractor testing results in an acceptance program. An acceptance program is the process of determining whether the materials and workmanship are in reasonably close conformity with the requirements of the approved plans and specifications. In 1992, the FHWA studied the ramifications of using contractor-performed sampling and testing results. The results of its study are reported in ''Limits of Use of Contractor Performed Sampling and Testing,'' dated July 1, 1993. (A copy of the report is available in the docket for inspection and copying.) One of the report's recommendations was that contractor sampling and testing may be used in acceptance programs, provided adequate checks and balances are in place to protect the public investment. The revisions to part 637 made in this final rule would implement the committee's recommendation.

This final rule provides more flexibility to the States in designing their acceptance programs than currently exists. Acceptance of materials and construction will not be based solely on any one set of information. Each State's verification sampling and testing will be used to ensure the quality of the product. In addition, the rule will permit the use of data from the contractors' quality control sampling and testing programs in acceptance programs if the results from the States' verification sampling and testing programs confirm the quality of the material. The verification sampling and testing must be performed on independent samples obtained by the State or designated agent to verify the quality of the material. If the results of a State's verification sampling and testing program do not confirm the quality of the product, a dispute resolution system must be used to determine payment to the contractor.

The requirement for an independent assurance (IA) program will remain in place. The rule will provide the States more flexibility in designing their IA program. The IA program will allow the use of witnessing, split samples, proficiency samples, and equipment calibration as an independent check of the field sampling and testing procedures and equipment to assure that the testing is being performed properly by both the State and the contractor personnel.

Comments to the Docket

A notice of proposed rulemaking (NPRM) was published in the **Federal Register** on July 12, 1994 (59 FR 35493), in which the FHWA proposed to revise 23 CFR Part 637, Construction Inspection and Approval. A total of 50 commenters responded to the NPRM as follows: 35 State highway agencies, 1 local agency, 1 toll authority, 10 construction industry associations and contractors, and 3 Subcommittees of the American Association of State Highway and Transportation Officials (AASHTO). The major comments and the FHWA's response thereto are summarized as follows.

Supportive of Change

Twenty-six commenters expressed their support for the revisions to the regulation. Fifteen commenters provided comments without indicating support or opposition to the NPRM. The remaining nine commenters were generally opposed to the proposed rule.

Use of Contractor Test Results

Commenters expressed three related concerns over the required system of checks and balances employed when contractor test results are used in the acceptance decision: (1) Requiring the use of independent samples instead of allowing either independent samples or split samples; (2) requiring the use of the F-test and the t-test (which are standard statistical tests for comparing the variances and means of two sets of data) because of the complexity of using the statistical tests; and (3) the perceived duplication of effort between the verification sampling and testing and the testing required by covering the contractor sampling and testing program in the IA program.

The overall intent of the program is to provide adequate assurance that the public is receiving the desired quality in the product produced by the contractor. The first level of assurance is provided by qualifying laboratories and testing personnel. This assures that the equipment and personnel *are capable* of performing the tests properly. The second level of assurance is provided by the IA program. This level assures that the testers and equipment *remain capable* of performing the tests properly. The third level of assurance is provided by verification sampling and testing. This level assures the *quality of the product.*

There appears to have been some misunderstanding of the total level of effort required. The rule as adopted gives the States wide latitude in designing the acceptance program. The system approach to IA assures the capabilities of all equipment and testers regardless of the number of projects or material quantities involved. A broad interpretation of the existing regulations would allow the system approach to IA. However, the final rule explicitly allows the system approach to IA. In those States that are performing a significant amount of testing on split samples and no testing on independent samples, testing on split samples would remain as IA sampling and testing; however, some verification testing on independent samples would be required to confirm the quality of the product. In addition, the verification of the *quality* of the material can be performed on a mix design or grading of material from a given source and is not limited to project-specific data.

Eleven commenters expressed concern over requiring the use of independent samples for the verification sampling and testing program. The

commenters recommended that the use of split samples be permitted for the verification sampling and testing program. The commenters are concerned about the potential problems that may arise with differences in testing results caused by sampling errors.

There are three sources of differences between two test results, differences in the material, differences in test procedures and differences in sampling procedures. Split samples will only address the differences in test procedures and will only provide assurance that the contractor is performing the tests properly. In a balanced system it is also necessary to assure that sampling of materials is performed properly. It is our intent that the verification sampling and testing program be used to independently validate the quality of the material. Using independent samples will insure that all sources of differences are measured. The FHWA recognizes the need to ensure that each contractor performs the tests correctly; that is the reason for extending laboratory and testing personnel qualification requirements and IA program requirements to the contractor if the contractor's test results are to be used in the acceptance decision. The FHWA expects the testing variability between the contractor and the State to be held to a minimum by requiring the contractor's testing program to be covered by an IA program and requiring the testing personnel and laboratories to be qualified. The FHWA has changed the definition of ''verification sampling and testing'' and § 637.207(a)(1)(ii)(B) to clarify the fact that the verification sampling and testing program is being used to validate the quality of the material.

Eight commenters objected to requiring the use of the F-test and t-test for verifying a contractor's test data. The commenters were concerned about the complexity of the F-test and t-test which would have to be used by field personnel and the lack of flexibility in allowing other comparison systems. The commenters requested that the regulation be revised to allow other types of comparison systems. The FHWA agrees with the concerns and has removed the requirement for a specific comparison procedure. Each State will have the latitude to develop its own verification system.

Three commenters—two State Highway Agencies and one local highway agency—objected to including contractors' testers in States' IA programs. The commenters are concerned over the additional resources involved in extending the IA program to contractor testing.

If a contractor's test results are to be used in the acceptance decision, assurance must be provided that the contractor's testers and equipment remain capable of performing the tests properly. Some States are currently performing split sampling and testing on project sites to validate the contractor's test results. This split sampling and testing would meet the requirements for an IA program on contractor testing. This proposed requirement has been retained in the final rule.

Qualified Sampling and Testing Personnel

Four commenters specifically supported the concept of certifying testing personnel.

Two commenters wanted to change the term certified personnel to qualified personnel. The FHWA agrees with the comments since the goal of the FHWA is to have qualified personnel perform the testing. The term ''certified'' was deleted from the definition of qualified testing personnel.

Sixteen commenters expressed concern about the cost, specific requirements, and/or two-year implementation period for establishing qualification programs for testing personnel. To allow adequate time to develop qualification programs, we have extended the implementation time from two years to five years. If a State chooses to use a certification program as its qualification program, the FHWA is developing training material that can be modified for State use. The FHWA will also assist the States in adapting the material for their use.

Independent Assurance Program

Thirteen commenters objected to the proposal to remove the requirement that State highway agency (SHA) personnel perform IA testing. The States wanted to continue to perform IA testing as a means to maintain expertise in the materials sampling and testing area and maintain the credibility of their materials programs. Since materials sampling and testing are an essential part of determining the quality of the product that is obtained from the use of Federal-aid funds, the FHWA has an interest in maintaining the States' expertise and credibility. However, in cases where States are using contractor test results in acceptance decisions, the FHWA believes it is important that the States have the option of using consultants to perform IA testing. It is important to note that the final rule does not require a SHA to use consultants in the IA program, but simply gives SHAs the option to do so. The FHWA has added § 637.205(b) which requires States to maintain an adequate, qualified staff with the capability of overseeing the entire quality assurance program and specifically requires the States to maintain a central laboratory. This requirement is consistent with 23 U.S.C. 302 which requires each State to maintain an adequate highway department.

Three commenters requested further clarification on the use of the system approach in performing an IA program. The intent of the system approach to the IA program is to concentrate on assuring that the testing personnel and equipment remain capable of performing the tests properly, regardless of the location or number of projects covered by the equipment and tester. The system approach will permit an SHA to fulfill the requirement for an IA program by implementing a schedule of activities to cover equipment operations and tester competence. The activities may include calibration checks, split samples, proficiency samples, and observations. The schedules and type of activity would be based on the test procedure. In the system approach, the frequency of IA may be independent of the number of tests performed or the quantity of material tested. It is envisioned that the system approach will be especially useful in cases where one tester performs testing for more than one project during a construction season. The previous requirement for IA entailed sampling and testing frequencies based on individual project production. In addition, a State may choose to use the information developed from the IA program in the qualification programs for testers and laboratories. One commenter asked if the NPRM would allow a State to use a hybrid approach, which would include some frequencies based on project quantities and frequencies based on the overall system. This rule as written would allow that approach. It should be noted that the rule does not require a State to use this approach.

One commenter wanted the requirements for the IA program to be less stringent. The requirements in the final rule for IA have been made less prescriptive than the current regulations and give a State more latitude in designing its IA system. The existing regulation requires State personnel to perform the IA sampling and testing. The final rule would allow: (1) The use of accredited consultant laboratories in executing an IA program, (2) a system approach instead of a project approach, (3) proficiency samples instead of split

samples, and (4) equipment calibration to cover the testing equipment.

Laboratory Qualification

Four commenters supported the proposed requirements for laboratory qualifications.

Eight commenters expressed concerns about the requirements for laboratory qualifications. The NPRM proposed to include by reference two paragraphs from the ''Standard Recommended Practice for Establishing and Implementing a Quality System for Construction Testing Laboratories'' (R–18) published by the AASHTO in the ''Standard Specifications for Transportation Materials and Methods of Sampling and Testing.'' The commenters believed that R–18 was not appropriate for field laboratories. It was not the FHWA's intent that the entire R–18 standard be used for the qualification of field laboratories. Due to the confusion caused by specifying only a part of R–18, the rule has been revised to specifically list the minimum requirements for field laboratories and delete the reference to R–18.

Eight commenters wanted clarification of the requirements for accreditation of the SHA central laboratory. It is the intent of the FHWA that the accreditation program must meet the guidelines in ASTM E–994. In addition to the guidelines in ASTM E–994, we have two additional concerns: First, regarding the acceptability of the assessors; and second, concerning the scope of the on-site assessment. For an accreditation program to be acceptable to the FHWA, the assessor must be employees of the accrediting body and not employed by a laboratory which may compete for work with the laboratory being assessed. This would avoid any potential conflicts of interest. In addition, the on-site assessment must include a detailed review of the test procedures in which the laboratory is being accredited. The FHWA believes that only one laboratory accreditation program currently meets the above concerns, and that is the AASHTO Accreditation Program. As we understand the operating procedures of other accreditation programs, they allow reviewers to be employees of other testing laboratories and do not require the laboratory to demonstrate all the tests in which the laboratory is being accredited. If other accreditation programs can satisfy our concerns, we will approve them. Any inquires or requests for approval should be directed to the FHWA's Office of Engineering.

Six commenters expressed concern about the cost and implementation time necessary for accrediting an SHA central laboratory. The commenters believe that two years is too short a time in which to become accredited. At this time 30 SHAs are accredited by the AASHTO Accreditation Program (AAP). The FHWA contacted the AAP to obtain data on the average length of time required by the AAP to accredit a SHA laboratory after receipt of an application for accreditation. Based on the information supplied by AAP, the FHWA believes that two years is an adequate lead time for obtaining accreditation. The requirement for accreditation replaces the inspections by the National Reference Laboratories which are required by § 637.205 of the current regulation. The actual cost of accreditation to the SHA is the same as the cost of inspection program that it replaces. However, there will be some costs associated with developing the quality system for the initial accreditation for the SHAs. The rule provides flexibility to the SHAs to designate private laboratories to perform independent assurance tests and dispute resolution testing. Since the SHAs must review the qualifications of designated laboratories, the SHAs need to be qualified at the highest level, which is accreditation. Therefore, this final rule maintains the laboratory accreditation requirements as originally proposed.

Definitions

Four commenters suggested changes to the definition of quality control. The definition of quality control was adapted from the definition in ANSI 90 and ISO 9000 which are the industry consensus standards for quality assurance. Therefore, the FHWA is retaining the definition as proposed.

Two commenters wanted to delete the word ''accredited'' from the definition of ''qualified laboratories''. There appears to be confusion over the use of the term ''accreditation'' since the NPRM used the word to describe two different levels of qualifications. The FHWA agrees with the comment because of the apparent confusion. The word ''accredited'' has been removed from the definition of ''qualified laboratories''.

Two commenters wanted clarification of the term ''vendor.'' A definition of ''vendor'' has been added to insure that it includes suppliers of project-produced materials. It was the FHWA's intent that the rule cover only project-produced materials and not manufactured materials.

One commenter suggested changes to the definition of ''quality assurance''. The definition of ''quality assurance'' was adapted from the definitions in the ANSI 90 and ISO 9000 standards which are the industry consensus standards for quality assurance. Therefore, the FHWA has retained this definition as proposed in the NPRM.

One commenter suggested requiring random sampling. The FHWA agrees with the comment. In order for test data used in the acceptance decision to be properly analyzed, samples must be obtained on a random basis. Section 637.205(e) has been added to require random sampling.

One commenter was concerned with the wording of the definition for IA, which the commenter interpreted as requiring the IA to be performed by a consultant. As stated earlier, it is the FHWA's intent that the States have the option to perform IA sampling and testing themselves or have a qualified designated agent perform the testing. The definition in the final rule has been revised to reflect our intent.

Miscellany

Eight commenters requested a delay in issuing a final rule. Their major concern was over potential conflicts between this final rule and AASHTO's effort to develop guide specifications for Quality Assurance. The AASHTO effort is related to this rulemaking. However, the ''AASHTO Quality Assurance Guide Specification'' and the ''AASHTO Implementation Manual for Quality Assurance'' are in the draft stage and are still being reviewed. It may be some time before these documents receive full endorsement by AASHTO. Since the current regulations do not address the practice of using contractor testing in making acceptance decisions, the FHWA believes that it is necessary to proceed with the final rule. The commenters were also concerned that the SHAs did not have adequate time to comment on the regulation. The NPRM provided a 60 day comment period. All comments that were received by the FHWA, including the eleven received after the closing of the comment period, were considered and included in the analysis. In addition, the FHWA received comments from 35 of the 52 SHAs. Therefore, the FHWA believes that adequate time was provided.

Five commenters provided comments on the dispute resolution system. There were comments on both sides of the issue of whether the dispute resolution system should allow third party involvement. Three commenters were in favor of keeping the system in the State; two were in favor of using third parties. In the NPRM the FHWA proposed to permit the SHAs to determine how they wanted to set up the dispute resolution system. The FHWA is aware of cases where a dispute resolution system has

worked well in both cases, so this proposal has been retained in the final rule.

Three commenters requested clarification of the terms ''acceptance'', ''verification'', and ''assurance''. This rule requires an acceptance program which includes the establishment of qualifications of testers and laboratories and inspection of construction operations and testing performed by the SHA or its designated agent. Verification sampling and testing is used to validate the quality of the product. Independent assurance is used specifically to insure that the testing is performed correctly and that the equipment is in calibration.

Two commenters provided comments on the materials certificate. One commenter requested that the wording on the material certificate be revised from requiring the materials and operations to be in ''conformity with the approved plans and specifications'' to ''reasonably close conformity to the approved plans and specification.'' The commenter was concerned about the added work of adding the individual material exceptions to the project plans and specifications to the materials certificate. The current regulation requires the material certificate to list all materials that do not meet the specifications. The FHWA reserves the right to review the materials certificate to determine if the materials are in conformity with the project plans and specifications. Therefore, the FHWA has retained the wording as proposed in the NPRM. The other commenter wanted to eliminate the requirement for the materials certificate. Section 637.201 limits the rule to projects on the NHS. In addition, § 637.207(a)(3) further limits the requirement for a materials certificate to projects that are subject to FHWA oversight reviews. This will eliminate the requirement for a materials certificate for the vast majority of projects. Since the cost of materials make up a substantial portion of each project and the information supplied by the materials certificate indicates the quality of the material, it is necessary to have the materials certificate in order to make an informed decision on whether to accept those projects for which the FHWA has retained construction oversight. Therefore, the FHWA has retained the proposed requirement for a materials certificate in this final rule.

One commenter indicated that the cost of implementing the regulation was high and a full regulatory review was needed. As noted below the FHWA has determined that this action is not a significant regulatory action under Executive Order 12366, Regulatory Planning and Review, nor significant under DOT Order 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations, and has concluded that a full regulatory evaluation is not required.

Costs to the States. Currently all States must have approved sampling and testing programs which include an IA program. In addition, all States are required to have their central laboratories inspected by the National Reference Laboratories. As indicated in the fee schedule for the AAP, the actual cost of accreditation itself for the SHAs is the same as the current inspection fees. The additional cost to the States for becoming accredited is in developing the quality assurance manuals which are required by the AAP. The justification for requiring accreditation is stated above. Since the vast majority of States have qualification requirements for their subsidiary laboratories, there would be no additional costs for the States that have these requirements. There would be minimal costs to those States that will have to develop qualification requirements for laboratories. There would be some costs in developing qualifications for testers. One aspect of tester qualifications is attendance at training programs. All States have some training for their technicians, but some of this training may have to be upgraded. However, as stated earlier, the FHWA has a training effort that is available to assist the States in setting up certification programs. The certification programs could be used in the States' establishment of tester qualifications.

Costs to the public. There would be no additional costs to the industry if a State chooses not to incorporate contractor tests into the acceptance system. If a State chooses to use contractor tests in acceptance decisions, contractors would be required to hire employees qualified in the appropriate tests and the State would be required to ensure that the contractors maintain a qualified laboratory or hire a qualified laboratory to perform the testing. When a State uses contractor quality control testing results in the acceptance decision, testing performed by the State is reduced. This reduction in testing by the State reduces the overhead costs in the State. However, any additional cost the contractors incur in performing the testing, including costs of obtaining qualified laboratories and testers, will be passed onto the State through higher bid prices. The cost savings by the State due to the reduction of testing by State personnel would be offset by the increase in bid prices charged by the contractors. As a result, the FHWA believes that the additional costs of these actions would be minimal.

One commenter was concerned because its Quality Assurance program is located in several documents and it did not want to consolidate the information into one document. The FHWA does not see the need for all the documentation of a State's Quality Assurance program to be in one document.

One commenter interpreted the NPRM to propose a requirement for a central laboratory and the commenter opposed such a requirement. The NPRM did not expressly propose to require a central laboratory; however, the NPRM did propose to require that each State's central laboratory be accredited by the AAP or a comparable program approved by the FHWA. For the reasons stated above, this final rule now requires a central laboratory.

One commenter was concerned about the effect of these QC/QA regulations on small projects. As indicated in the preamble of the NPRM, it is not the intent of the FHWA in this regulation to require the use of contractor testing in the acceptance decision. In addition, the rule expressly covers only projects on the National Highway system (NHS); projects not on the NHS can use other SHA procedures to accept materials. It is anticipated that the majority of small projects will not be on the NHS.

One commenter was against QC/QA procedures. The rule does not require SHAs to use statistical concepts or to use contractor-supplied test results in the acceptance decision. However, the rule does establish minimum requirements if an SHA chooses to use contractor tests results in the acceptance decision.

One commenter suggested a revision to the portion of § 637.207 concerning inspection to reflect the positive as well as the negative aspects of the quality of the product or construction. The section in the NPRM read, ''The SHA shall inspect the product or construction or both for attributes that are detrimental to the performance of the finished product.'' The FHWA agrees with the comment. Section 637.207(a)(1)(i)(C) has been revised to reflect both benificial and negative aspects of the quality of the finished product.

One commenter indicated that the regulation was too prescriptive. The rule, however, provides more flexibility than the existing regulation. The rule allows the use of contractor test results in making the acceptance decision and allows the use of consultants in the independent assurance program. Neither of these were allowed by the

existing regulations. The regulation requires testers and laboratories to be qualified. However, it gives the States the flexibility to establish those qualifications. In addition, the final rule modified Section 637.207 to remove the requirement for a specific comparison procedure to validate the quality of the material. The rule clarifies existing policy and procedures and provides additional guidance on the use of contractor-supplied test results in acceptance plans.

One commenter questioned the title and purpose of the proposed rule, indicating that the rule covers materials and not construction. Over 50 percent of the cost of construction is the cost of the material. In addition, the rule requires each State to inspect construction to insure that the construction procedures do not adversely affect the properties of the material. Therefore, the title of this rule remains unchanged.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation's regulatory policies and procedures. The FHWA, at 23 CFR 637, currently has regulations covering sampling and testing. The rule provides the States with additional flexibility in comparison to the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform independent assurance testing. Other changes update the current regulations to accommodate contractor-performed sampling and testing and reinforce existing policy. Therefore, it is anticipated that the economic impact of this rulemaking will be minimal and a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. The FHWA concluded that this action may provide some small testing firms with an opportunity to perform more work than was allowed by the previous regulations. Although the regulation will have a positive impact on these testing firms, the number of firms affected will be small and the amount of additional work would be insignificant. Therefore, the FHWA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The rule provides the States with additional flexibility over the current regulations. States will be allowed to use contractor test results in making acceptance decisions and consultants to perform IA testing. Therefore, it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520.

National Environmental Policy Act

This rulemaking does not have any effect on the environment. It does not constitute a major action having a significant effect on the environment, and therefore does not require the preparation of an environmental impact statement pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 637

Grant programs—transportation, Highways and roads, Quality assurance, Materials sampling and testing.

Issued on: June 22, 1995.

Rodney E. Slater,

Federal Highway Administrator

In consideration of the foregoing, the FHWA is amending title 23, Code of Federal Regulations, by revising part 637 to read as follows:

PART 637—CONSTRUCTION INSPECTION AND APPROVAL

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

Sec.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Authority: 23 U.S.C. 109, 114, and 315; 49 CFR 1.48(b).

Subpart A—[Reserved]

Subpart B—Quality Assurance Procedures for Construction

§ 637.201 Purpose.

To prescribe policies, procedures, and guidelines to assure the quality of materials and construction in all Federal-aid highway projects on the National Highway System.

§ 637.203 Definitions.

Acceptance program. All factors that comprise the State highway agency's (SHA) determination of the quality of the product as specified in the contract requirements. These factors include verification sampling, testing, and inspection and may include results of quality control sampling and testing.

Independent assurance program. Activities that are an unbiased and independent evaluation of all the sampling and testing procedures used in the acceptance program. Test procedures used in the acceptance program which are performed in the SHA's central laboratory would not be covered by an independent assurance program.

Proficiency samples. Homogeneous samples that are distributed and tested by two or more laboratories. The test results are compared to assure that the laboratories are obtaining the same results.

Qualified laboratories. Laboratories that are capable as defined by appropriate programs established by each SHA. As a minimum, the qualification program shall include provisions for checking test equipment and the laboratory shall keep records of calibration checks.

Qualified sampling and testing personnel. Personnel who are capable as defined by appropriate programs established by each SHA.

Quality assurance. All those planned and systematic actions necessary to provide confidence that a product or service will satisfy given requirements for quality.

Quality control. All contractor/vendor operational techniques and activities that are performed or conducted to fulfill the contract requirements.

Random sample. A sample drawn from a lot in which each increment in the lot has an equal probability of being chosen.

Vendor. A supplier of project-produced material that is not the contractor.

Verification sampling and testing. Sampling and testing performed to validate the quality of the product.

§ 637.205 Policy.

(a) Quality assurance program. Each SHA shall develop a quality assurance program which will assure that the materials and workmanship incorporated into each Federal-aid highway construction project on the NHS are in conformity with the requirements of the approved plans and specifications, including approved changes. The program must meet the criteria in § 637.207 and be approved by the FHWA.

(b) SHA capabilities. The SHA shall maintain an adequate, qualified staff to administer its quality assurance program. The State shall also maintain a central laboratory. The State's central laboratory shall meet the requirements in § 637.209(a)(2).

(c) Independent assurance program. Independent assurance samples and tests or other procedures shall be performed by qualified sampling and testing personnel employed by the SHA or its designated agent.

(d) Verification sampling and testing. The verification sampling and testing are to be performed by qualified testing personnel employed by the SHA or its designated agent, excluding the contractor and vendor.

(e) Random samples. All samples used for quality control and verification sampling and testing shall be random samples.

§ 637.207 Quality assurance program.

(a) Each SHA's quality assurance program shall provide for an acceptance program and an independent assurance (IA) program consisting of the following:

(1) Acceptance program.

(i) Each SHA's acceptance program shall consist of the following:

(A) Frequency guide schedules for verification sampling and testing which will give general guidance to personnel responsible for the program and allow adaptation to specific project conditions and needs.

(B) Identification of the specific location in the construction or production operation at which verification sampling and testing is to be accomplished.

(C) Identification of the specific attributes to be inspected which reflect the quality of the finished product.

(ii) Quality control sampling and testing results may be used as part of the acceptance decision provided that:

(A) The sampling and testing has been performed by qualified laboratories and qualified sampling and testing personnel.

(B) The quality of the material has been validated by the verification sampling and testing. The verification testing shall be performed on samples that are taken independently of the quality control samples.

(C) The quality control sampling and testing is evaluated by an IA program.

(iii) If the results from the quality control sampling and testing are used in the acceptance program, the SHA shall establish a dispute resolution system. The dispute resolution system shall address the resolution of discrepancies occurring between the verification sampling and testing and the quality control sampling and testing. The dispute resolution system may be administered entirely within the SHA.

(2) The IA program shall evaluate the qualified sampling and testing personnel and the testing equipment. The program shall cover sampling procedures, testing procedures, and testing equipment. Each IA program shall include a schedule of frequency for IA evaluation. The schedule may be established based on either a project basis or a system basis. The frequency can be based on either a unit of production or on a unit of time.

(i) The testing equipment shall be evaluated by using one or more of the following: Calibration checks, split samples, or proficiency samples.

(ii) Testing personnel shall be evaluated by observations and split samples or proficiency samples.

(iii) A prompt comparison and documentation shall be made of test results obtained by the tester being evaluated and the IA tester. The SHA shall develop guidelines including tolerance limits for the comparison of test results.

(iv) If the SHA uses the system approach to the IA program, the SHA shall provide an annual report to the FHWA summarizing the results of the IA program.

(3) The preparation of a materials certification, conforming in substance to Appendix A of this subpart, shall be submitted to the FHWA Division Administrator for each construction project which is subject to FHWA construction oversight activities.

(b) [Reserved]

§ 637.209 Laboratory and sampling and testing personnel qualifications.

(a) Laboratories.

(1) After June 29, 2000, all contractor, vendor, and SHA testing used in the acceptance decision shall be performed by qualified laboratories.

(2) After June 30, 1997, each SHA shall have its central laboratory accredited by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(3) After June 29, 2000, any non-SHA designated laboratory which performs IA sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(4) After June 29, 2000, any non-SHA laboratory that is used in dispute resolution sampling and testing shall be accredited in the testing to be performed by the AASHTO Accreditation Program or a comparable laboratory accreditation program approved by the FHWA.

(b) Sampling and testing personnel. After June 29, 2000, all sampling and testing data to be used in the acceptance decision or the IA program shall be executed by qualified sampling and testing personnel.

(c) Conflict of interest. In order to avoid an appearance of a conflict of interest, any qualified non-SHA laboratory shall perform only one of the following types of testing on the same project: Verification testing, quality control testing, IA testing, or dispute resolution testing.

Appendix A to Subpart B—Guide Letter of Certification by State Engineer

Date _____

Project No. _____

This is to certify that:

The results of the tests used in the acceptance program indicate that the materials incorporated in the construction work, and the construction operations controlled by sampling and testing, were in conformity with the approved plans and specifications. (The following sentence should be added if the IA testing frequencies are based on project quantities. All independent assurance samples and tests are within tolerance limits of the samples and tests that are used in the acceptance program.)

Exceptions to the plans and specifications are explained on the back hereof (or on attached sheet).

Director of SHA Laboratory or other appropriate SHA Official.

[FR Doc. 95–15932 Filed 6–28–95; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 3, 7, 15, 18, 23, 32, 33, 36, 40, 43, 45, 48, 56, 57, 70, 71, 75, 77, and 90

Office of Management and Budget Control Numbers Under the Paperwork Reduction Act

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is adding a new part to its regulations in order to consolidate the display of Office of Management and Budget (OMB) control numbers approved under the Paperwork Reduction Act. The display references regulations promulgated under the Mine Act containing recordkeeping and reporting requirements. This consolidation will assist the public search for specific information on recordkeeping and reporting requirements approved by OMB and will provide the Agency a format that is simpler to maintain.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 703–235–1910.

SUPPLEMENTARY INFORMATION: MSHA reviewed its existing regulations requiring collection of information for OMB control number display and accuracy. As part of that review, MSHA is today publishing the control numbers issued by OMB for information collection. The affected regulations are codified in title 30 of the Code of Federal Regulations (30 CFR) parts 7, 15, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 32, 33, 35, 36, 40, 41, 43, 44, 45, 48, 49, 50, 56, 57, 70, 71, 75, 77, and 90.

MSHA is presenting the OMB control numbers in a table format to be codified in part 3, subchapter A, chapter I, 30 CFR. This part will fulfill the requirements of 44 U.S.C. 3507(f) of the Paperwork Reduction Act which prohibits an agency from engaging in a collection of information without displaying the control number obtained from OMB. The table lists the part and section numbers with reporting and recordkeeping requirements and the OMB control numbers. MSHA selected the list format to provide ease of referencing paperwork burden hours and to allow consistent updating. As a result of this new format, the parenthetical statements containing OMB control numbers currently found in 30 CFR at the end of individual paragraphs can be removed.

The OMB control numbers listed in this document were approved previously by OMB. This document makes no substantive change to the current OMB information collection budget. When control numbers included on this list are not found in 30 CFR, it is due to their having been inadvertently omitted from publication in the **Federal Register**, even though OMB approval had been obtained. When control numbers in this document differ from those currently listed in 30 CFR, it is due to a correction of errors or an earlier consolidation of control numbers. In other cases, OMB control numbers currently listed at the end of individual paragraphs were removed previously from OMB's List of Active Information Collections Approved Under the Paperwork Reduction Act, but not removed from 30 CFR. OMB removed some of these numbers as a result of a 1990 Supreme Court decision on third-party disclosure rendering some types of regulations no longer applicable for OMB review under the 1980 Paperwork Reduction Act. In some cases, MSHA converted a reporting requirement to certification as provided in 44 U.S.C. 3501–3520.

MSHA has determined that public notice and comment is ''unnecessary'' in this rulemaking because the reformatting of OMB control numbers from the end of the regulatory information collection sections to a composite list constitutes a minor technical amendment which contains no new requirements. As a result, MSHA finds that there is ''good cause'' under 5 U.S.C. 553 (b)(B) of the Administrative Procedure Act (APA) to issue this table without prior public notice and comment. In addition, MSHA has determined that delaying the effective date is ''unnecessary'' because the technical amendment contains no new requirements for which the public would need time to plan compliance. MSHA finds, therefore, that there is ''good cause'' to except this action from the 30-day delayed effective date requirement pursuant to 5 U.S.C. 553(d)(3) of the APA.

List of Subjects in 30 CFR Part 3

Reporting and recordkeeping requirements.

Dated: June 23, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, under the authority of 30 U.S.C. 957, chapter I of title 30, Code of Federal Regulations is amended as set forth below.

1. Subchapter A heading in chapter I is revised to read as follows:

Subchapter A—Official Emblem and OMB Control Numbers for Recordkeeping and Reporting

2. Part 3 is added to subchapter A to read as follows:

PART 3—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Authority: 30 U.S.C. 957; 44 U.S.C. 3501–3520.

§ 3.1 OMB control numbers.

The collection of information requirements in MSHA regulation sections in this chapter have been approved and assigned control numbers by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Regulation sections in this chapter containing paperwork requirements and their respective OMB control numbers are displayed in the following table:

TABLE 1.—OMB CONTROL NUMBERS

30 CFR citation	OMB control No.
Subchapter B—Testing, Evaluation, and Approval of Mining Products	
7.3	1219–0100
7.4 (a)	1219–0100
7.6 (c)	1219–0100

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
7.7 (d)	1219–0100
7.23	1219–0100
7.27	1219–0100
7.28	1219–0100
7.43	1219–0100
7.46	1219–0100
7.47	1219–0100
7.48	1219–0100
7.51	1219–0100
7.63	1219–0100
7.66	1219–0100
7.67	1219–0100
7.68	1219–0100
7.71	1219–0100
7.303	1219–0115
7.306	1219–0115
7.307	1219–0115
7.308	1219–0115
7.309	1219–0115
7.311	1219–0115
7.403	1219–0117
7.407	1219–0117
7.408	1219–0117
15.4	1219–0066
15.7	1219–0066
15.8	1219–0066
18.6	1219–0066
18.15	1219–0066
18.81	1219–0066
18.82	1219–0066
18.93	1219–0066
18.94	1219–0066
19.3	1219–0066
19.13	1219–0066
20.3	1219–0066
20.14 (a)	1219–0066
21.4	1219–0066
21.10 (a)	1219–0066
22.4	1219–0066
22.11	1219–0066
23.3	1219–0066
23.14	1219–0066
26.8 (a), (b)	1219–0066
27.4	1219–0066
27.6	1219–0066
27.11 (a)	1219–0066
28.10	1219–0066
28.25	1219–0066
28.30	1219–0066
28.31	1219–0066
29.10	1219–0066
29.12	1219–0066
29.33	1219–0066
29.35	1219–0066
29.40	1219–0066
29.41	1219–0066
29.43 (a)	1219–0066
29.54 (a), (b)	1219–0066
29.56	1219–0066
32.3	1219–0066
32.8 (a)	1219–0066
33.6	1219–0066
33.12	1219–0066
35.6	1219–0066
35.12	1219–0066
36.6	1219–0066
36.12	1219–0066
Subchapter G—Filing and Other Administrative Requirements	
40.3	1219–0042
40.5	1219–0042

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
41.20	1219–0008
43.4	1219–0014
43.7	1219–0014
44.10	1219–0065
44.11	1219–0065
45.3	1219–0043
45.4	1219–0040
48.3	1219–0009
48.9 (a), (c)	1219–0070
48.23	1219–0009
48.29 (a), (c)	1219–0070
49.3	1219–0078
49.4 (b), (d), (e)	1219–0078
49.6 (b)	1219–0093
49.8	1219–0077
Subchapter M—Accidents, Injuries, Illnesses, Employment, and Production in Mines	
50.20	1219–0007
50.30	1219–0006
Subchapter N—Metal and Nonmetal Mine Safety and Health	
56.1000	1219–0092
56.5005	1219–0048
56.14100 (d)	1219–0089
56.19022	1219–0034
56.19023	1219–0034
56.19121	1219–0034
57.1000	1219–0092
57.3461	1219–0097
57.5005	1219–0048
57.5037	1219–0003
57.5040	1219–0003
57.5047 (a), (c)	1219–0039
57.8520	1219–0016
57.8525	1219–0012
57.11053	1219–0046
57.14100	1219–0089
57.19022	1219–0034
57.19023	1219–0034
57.19121	1219–0034
57.22004 (c)	1219–0103
57.22204	1219–0030
57.22230	1219–0103
57.22239	1219–0103
57.22401	1219–0096
57.22606	1219–0095
Subchapter O—Coal Mine Safety and Health	
70.209	1219–0011
70.504–1	1219–0001
70.506	1219–0037
70.507	1219–0037
70.508	1219–0037
70.509	1219–0037
70.510 (b)	1219–0017
71.209	1219–0011
71.403	1219–0024
71.404	1219–0024
71.500	1219–0101
71.801	1219–0001 1219–0037
71.802	1219–0037
71.803	1219–0037
71.804	1219–0037
71.805	1219–0017
75.100	1219–0069
75.153 (c)	1219–0001
75.155 (c)	1219–0069
75.159	1219–0049
75.220	1219–0004
75.221	1219–0004
75.223	1219–0004

TABLE 1.—OMB CONTROL NUMBERS—Continued

30 CFR citation	OMB control No.
75.312	1219–0088
75.351 (h)	1219–0088
75.360	1219–0088
75.361	1219–0088
75.362	1219–0088
75.364	1219–0088
75.370	1219–0088
75.512	1219–0067
75.703–3	1219–0067
75.800–4	1219–0067
75.812	1219–0067
75.900–4	1219–0067
75.1001–1	1219–0067
75.1003–2	1219–0067
75.1101–23	1219–0054
75.1204	1219–0073
75.1204–1	1219–0073
75.1321	1219–0025
75.1400–2	1219–0034
75.1400–4	1219–0034
75.1432	1219–0034
75.1433	1219–0034
75.1702	1219–0041
75.1712–4	1219–0024
75.1712–5	1219–0024
75.1712–6	1219–0101
75.1713–3	1219–0085
75.1714–3	1219–0044
75.1716	1219–0020
75.1716–1	1219–0020
75.1716–3	1219–0020
77.100	1219–0069
77.103 (c)	1219–0001
77.105 (b)	1219–0069
77.106	1219–0049
77.215	1219–0015
77.215–2	1219–0015
77.215–3	1219–0015
77.215–4	1219–0015
77.216	1219–0015
77.216–2	1219–0015
77.216–3	1219–0015
77.216–4	1219–0015
77.216–5	1219–0015
77.502	1219–0067
77.800–2	1219–0067
77.900–2	1219–0067
77.1000	1219–0026
77.1000–1	1219–0026
77.1101	1219–0051
77.1404	1219–0034
77.1432	1219–0034
77.1433	1219–0034
77.1703	1219–0085
77.1713	1219–0083
77.1900	1219–0019
77.1901	1219–0082
77.1906	1219–0034
77.1909–1	1219–0025
90.209	1219–0011

3. The following sections are amended by removing the OMB parenthetical found at the end of each section.

30 CFR SECTION CITATIONS

7.3	40.2	57.19022	75.223	75.1716
7.4	43.2	57.19023	75.512	75.1806
7.6	45.3	57.19121	75.800–4	77.106
7.7	48.3	57.22004	75.812	77.215
7.23	48.9	57.22204	75.900–4	77.215–2

30 CFR SECTION CITATIONS—Continued

7.27	48.23	57.22230	75.1001–1	77.215–4
7.28	48.29	57.22239	75.1003–2	77.1000–1
7.43	56.1000	57.22401	75.1100–3	77.1101
7.46	56.5005	70.209	75.1101–23	77.1110
7.47	56.14130	70.508	75.1107–16	77.1404
7.48	56.19022	70.509	75.1204	77.1432
7.51	56.19023	70.510	75.1204–1	77.1433
7.63	56.19121	71.209	75.1301	77.1702
7.71	57.1000	71.403	75.1321	77.1713
15.4	57.5005	71.500	75.1400–4	77.1900
15.7	57.5037	71.802	75.1432	77.1901
15.8	57.5040	71.803	75.1433	77.1906
18.6	57.5047	71.804	75.1702	77.1909–1
23.3	57.8520	71.805	75.1712	90.209
32.3	57.8525	75.159	75.1712–4	
33.6	57.11053	75.220	75.1713	
36.6	57.14130	75.221	75.1714–3	

PART 45—[AMENDED]

4. The authority citation for part 45 is revised to read as follows:

Authority: 30 U.S.C. 802(d), 957.

5. Part 45 is amended by removing the parenthetical immediately preceding § 45.1.

[FR Doc. 95–15973 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 756, 902, 916, and 944

Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah Abandoned Mine Land Reclamation (AMLR) Plans and Alaska and Kansas Regulatory Programs

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

ACTION: Final rule; technical amendment.

SUMMARY: OSM is making technical amendments to 30 CFR Chapter VII, Subchapters E and T. OSM is updating or adding addresses for the locations of the publicly available copies of the Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah AMLR plans and the Alaska and Kansas regulatory programs, correcting the codification of the section approving the Utah AMLR plan, and making other minor codification changes for consistency.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Leslie Stream, Branch of Environmental and Economic Analysis, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Washington, DC 20240, Telephone: (202) 208–2840.

SUPPLEMENTARY INFORMATION:

I. Background

Since July 1, 1994, the date of the most recent revision to Title 30 of the Code of Federal Regulations (30 CFR Part 700 to End), OSM has become aware of changes that need to be made to the addresses of State, Tribe, and OSM offices involved in certain State and Tribe AMLR plans and to the addresses of State and OSM offices involved in certain State regulatory programs. OSM is updating or adding State, Tribe, and OSM addresses at 30 CFR Parts 756, 902, 916, and 944 to accurately indicate where copies of the Navajo Nation, Hopi Tribe, Alaska, Kansas, and Utah AMLR plans are available for public inspection and copying. Similarly, and in accordance with 30 CFR 732.11(a), OSM is updating State and OSM office addresses at 30 CFR Parts 902 and 916 to accurately indicate where copies of the Alaska and Kansas regulatory programs are available for public inspection and copying.

OSM is also taking this opportunity to correct the codification of the paragraphs within section 30 CFR 944.20 approving the Utah AMLR plan. OSM is correcting the codification set forth in the **Federal Register** on September 27, 1994 (59 FR 49185, 49189).

Lastly, to ensure consistency in the codification of certain AMLR plan and regulatory program sections, OSM is lettering certain paragraphs that were previously unlettered.

II. Procedural Matters

1. Administrative Procedure Act

The minor revisions contained in this rulemaking are technical in nature. Accordingly, pursuant to 5 U.S.C. 553(b)(B), it has been determined that the notice and public comment procedures of the Administrative Procedure Act are unnecessary. For the same reason, it has been determined that in accordance with 5 U.S.C. 553(d), there is good cause to make the rule effective on the date of publication in the **Federal Register**.

2. 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).

3. 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. This rule (1) does not preempt any State, Tribal, or local laws or regulations; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

4. National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2 appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

5. 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.*).

6. 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.*). This rule merely revises addresses contained in the regulations.

List of Subjects in 30 CFR Parts 756, 902, 916, and 944

Abandoned mine land reclamation program, Indian lands, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 22, 1995.

Peter A. Rutledge,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapters E and T of the Code of Federal Regulations are amended as set forth below:

PART 756—INDIAN TRIBE ABANDONED MINE LAND RECLAMATION PROGRAMS

1. The authority citation for Part 756 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.* and Pub. L. 100–71.

2. Section 756.13 is revised to read as follows:

§ 756.13 Approval of the Navajo Nation's Abandoned Mine Land Plan.

The Navajo Nation's Abandoned Mine Land Plan as submitted in June 1982, resubmitted in September 1983, and amended in February 1988, is approved effective May 16, 1988. Copies of the approved program are available at:

(a) The Navajo Nation, Navajo Abandoned Mine Land Reclamation Department, Division of Natural Resources, Navajo Nation Inn—Office Complex, P.O. Box 1875, Window Rock, AZ 86515, Telephone: (520) 871–7593.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

3. Section 756.15 is revised to read as follows:

§ 756.15 Approval of the Hopi Tribe's Abandoned Mine Land Reclamation Plan.

The Hopi Tribe's Abandoned Mine Land Reclamation Plan as submitted in July 1983, and amended in March and May 1988, is approved effective June 28, 1988. Copies of the approved plan are available at the following locations:

(a) The Hopi Tribe, Hopi Abandoned Mine Land Program, Department of Natural Resources, Honahni Building, P.O. Box 123, Kykotsmovi, AZ 86039, Telephone: (520) 734–2441.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Ave., NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505) 766–1486.

PART 902—ALASKA

1. The authority citation for Part 902 continues to read as follows:

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

2. Section 902.10 is revised to read as follows:

§ 902.10 State regulatory program approval.

The Alaska State program as submitted on July 23, 1982, and as amended and clarified on December 13, 1982, and January 11, 1983, is approved effective May 2, 1983. Beginning on that date, the Alaska Department of Natural Resources shall be deemed the regulatory authority in Alaska for all surface coal mining and reclamation operations and all exploration operations on non-Federal and non-Indian lands. Only surface coal mining and reclamation operations on non-Federal and non-Indian lands shall be subject to the provisions of the Alaska permanent regulatory program. Copies of the approved program are available at the following addresses:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907) 762–2149.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307) 261–5776.

3. Section 902.20 is revised to read as follows:

§ 902.20 Approval of Alaska Abandoned Mine Land Reclamation Plan.

The Alaska Reclamation Plan, as submitted on August 17, 1983, is approved effective December 23, 1983. Copies of the approved plan are available at:

(a) Department of Natural Resources, Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, AK 99503–5925, Telephone: (907)762–2149.

(b) Office of Surface Mining Reclamation and Enforcement, Casper Field Office, 100 East B Street, Room 2128, Casper, WY 82601–1918, Telephone: (307)261–5776.

PART 916—KANSAS

1. The authority citation for Part 916 continues to read as follows:

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

2. Section 916.10 is revised to read as follows:

§ 916.10 State regulatory program approval.

The Kansas program as submitted on February 26, 1980, and amended on October 31, 1980, was conditionally approved effective January 21, 1981. Beginning on that date, and continuing until July 1, 1988, the Kansas Mined Land Conservation and Reclamation Board was deemed the regulatory authority in Kansas for all surface coal mining and reclamation operations on non-Federal and non-Indian lands. Beginning on July 1, 1988, the Department of Health and Environment shall be deemed the regulatory authority, pursuant to the program transfer provisions of House Bill 3009 as signed by the Governor of Kansas on April 8, 1988. Copies of the approved program, as amended, are available at:

(a) Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316)231–8615.

(b) Office of Surface Mining Reclamation and Enforcement, Kansas City Field Office, 934 Wyandotte Street, Room 500, Kansas City, MO 64105, Telephone: (816)374–6405.

3. Section 916.20 is revised to read as follows:

§ 916.20 Approval of Kansas Abandoned Mine Land Reclamation Plan.

The Kansas AMLR Plan as submitted on October 1, 1981, and as amended by Kansas Statute 49–428 on April 14, 1982, is hereby fully approved and all conditions prohibiting the funding of State AML construction grants are deleted. Copies of the approved Kansas AMLR plan are available at:

(a) Kansas Department of Health and Environment, Bureau of Environmental Remediation, Surface Mining Section, 1501 South Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316)231–8615.

(b) Office of Surface Mining Reclamation and Enforcement, Kansas

City Field Office, 934 Wyandotte Street, Room 500, Kansas City, MO 64105, Telephone: (816)374–6405.

PART 944—UTAH

1. The authority citation for Part 944 continues to read as follows:

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

2. Section 944.20 is revised to read as follows:

§ 944.20 Approval of Utah Abandoned Mine Plan.

The Utah Abandoned Mine Plan as submitted on February 9, 1983, and as subsequently revised, is approved effective June 3, 1983. Copies of the approved plan are available at:

(a) Division of Oil, Gas and Mining, Department of Natural Resources, 3 Triad Center, Suite 350, 355 West North Temple, Salt Lake City, UT 84180–1203, Telephone: (801)538–5340.

(b) Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 505 Marquette Avenue NW., Suite 1200, Albuquerque, NM 87102, Telephone: (505)766–1486.

[FR Doc. 95–15968 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

Amendments to the Bank Secrecy Act Regulations Regarding Reporting and Recordkeeping Requirements by Casinos; Correction

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to regulations related to the Bank Secrecy Act reporting and recordkeeping requirements for casinos.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Leonard C. Senia, Compliance Specialist, Office of Regulatory Policy and Enforcement, Financial Crimes Enforcement Network, (703) 905–3931.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections affect casinos which are designated generally as ''financial institutions'' for purposes of the Bank Secrecy Act *see, e.g.,* 31 CFR 103.11(i)(7). Under the Bank Secrecy Act's implementing regulations, these casinos are subject to particular reporting and recordkeeping requirements, *see, e.g.,* 31 CFR 103.22(a)(2), 103.36 and 103.54.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification. The first correction removes a misleading effective date and the second correction is for a misspelling.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks and banking, Currency, Foreign banking, Investigations, Law enforcement, Reporting and recordkeeping requirements, Taxes.

Accordingly, 31 CFR part 103 is corrected by making the following correcting amendments:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 continues to read as follows:

Authority: Pub. L. No. 91–508, title I, 84 Stat. 1114 (12 U.S.C. 1829b, 1951–1959); 31 U.S.C. 5311–5330.

§ 103.54 [Corrected]

2. In § 103.54, paragraph (a)(1), is revised to read as follows:

§ 103.54 Special rules for casinos.

(a) * * *

(1) Each casino shall develop and implement a written program reasonably designed to assure and monitor compliance with the requirements set forth in 31 U.S.C. chapter 53, subchapter II and the regulations contained in this part.

* * * * *

3. In § 103.54(a)(2)(v)(B), remove ''usual'' and add in its place ''unusual''.

Dated: June 23, 1995.

Stanley E. Morris,

Director, Financial Crimes Enforcement Network.

[FR Doc. 95–15910 Filed 6–28–95; 8:45 am]

BILLING CODE 4820–03–P

Office of Foreign Assets Control

31 CFR Parts 520, 540, 545, 555, 565, 570 and 580

Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations, Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, Haitian Transactions Regulations; Removal of Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: This rule removes 31 CFR parts 520, 540, 545, 555, 565, 570 and 580, the Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations, Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, and Haitian Transactions Regulations.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480), or William B. Hoffman, Chief Counsel (tel.: 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 and type ''/GO/FAC'', or call 202/512–1530 for disks or paper copies. This file is available for downloading in WordPerfect 5.1, ASCII, and Postscript formats. The document is also accessible for downloading in ASCII format without charge from Treasury's Electronic Library (''TEL'') in the ''Business, Trade and Labor Mall'' of the FedWorld bulletin board. By modem dial 703/321–3339, and select self-expanding file ''T11FR00.EXE'' in TEL. For Internet access, use one of the following protocols: Telnet = fedworld.gov (192.239.93.3); World Wide Web (Home Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205).

Background

This rule removes 31 CFR parts 520, 540, 545, 555, 565, 570 and 580, the Foreign Funds Control Regulations, Nicaraguan Trade Control Regulations, South African Transactions Regulations, Soviet Gold Coin Regulations,

Panamanian Transactions Regulations, Kuwaiti Assets Control Regulations, and Haitian Transactions Regulations. Parts 540, 565, 570 and 580 relate to sanctions programs under national emergency declarations that have been terminated by Executive order. Parts 545 and 555 contained sanctions mandated by the Comprehensive Anti–Apartheid Act of 1986, 22 U.S.C. 5001–5116 (1986), that have been lifted upon repeal of the authorizing provisions or terminated by Presidential determination pursuant to that Act. Part 520 contains residual sanctions measures imposed during World War II, including procedural requirements that have no further practical purpose relating to securities looted from their rightful owners by the Nazis. Removal of these parts does not affect ongoing enforcement proceedings, nor prevent the initiation of enforcement proceedings where the relevant statute of limitations has not run.

Because these Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601–612, does not apply.

List of Subjects

31 CFR Part 520

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 540

Administrative practice and procedure, Foreign Assets Control Office, Foreign trade, Nicaragua, Penalties, Reporting and recordkeeping requirements.

31 CFR Part 545

Administrative practice and procedure, Banks, Banking, Foreign Assets Control office, Foreign currencies, Gold, Imports, Krugerrands, Penalties, Reporting and recordkeeping requirements, South Africa, United States investments abroad.

31 CFR Part 555

Gold, Imports, Penalties, Reporting and recordkeeping requirements, Treasury Department, Union of Soviet Socialist Republics.

31 CFR Part 565

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Panama, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 570

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Foreign trade, Iraq, Kuwait, Penalties, Reporting and recordkeeping requirements, Securities.

31 CFR Part 580

Administrative practice and procedure, Banks, Banking, Currency, Foreign Assets Control Office, Foreign investments in United States, Foreign trade, Haiti, Penalties, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, 31 CFR chapter V is amended by removing parts 520, 540, 545, 555, 565, 570, and 580.

Dated: June 20, 1995

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: June 20, 1995.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 95–15927 Filed 6–23–95; 4:58 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840 AC09

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Final regulations—Correction.

On November 30, 1994, and June 15, 1995 the Secretary published in the **Federal Register** final regulations for the Federal Family Education Loan Program (59 FR 61424) and (60 FR 31410). These regulations correct those regulations to read as follows—

1. In the November 30, 1994 regulations (page 61424) under ''Effective Date'', ''682.603'' is corrected to read ''682.604''.

§ 682.603 [Corrected]

2. In the June 15, 1995 regulations, page 31411, item 2, ''682.603'' is corrected to read ''682.604''.

FOR FURTHER INFORMATION CONTACT: Pamela Moran, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 600 Independence Avenue, SW., (Room 3053, ROB–3), Washington, DC 20202–5447. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: June 23, 1995.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 95–15966 Filed 6–28–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Alaska Federal Subsistence Regional Advisory Council Meetings

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice informs the public of the Regional Council meetings identified above. The public is invited to attend and observe meeting proceedings. In addition, the public is invited to provide oral testimony before the Councils on the agenda items listed below.

DATES: The Federal Subsistence Board announces the forthcoming public meetings of the Federal Subsistence Regional Advisory Councils (Regional Councils). The Regional Council meetings will be held in the following Alaska locations, and begin at the specified dates and times:

Joint Region 7 (Seward Peninsula) and Region 8 (Northwest Arctic)—Kotzebue, Alaska Technical Center—July 6–7, 1995 at 10:00 a.m.

Region 2 (Southcentral)—Anchorage, July 12, 1995, 8:00 a.m.–12 a.m. Specific location to be determined.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road,

Anchorage, Alaska 99503; telephone (907) 786–3467. For questions related to subsistence management issues on National Forest Service lands, inquiries may also be directed to Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628; telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION: The following agenda items will be discussed at the respective Regional Council meetings:

Joint Region 7 and Region 8 meeting—Subsistence take of muskox on Federal lands in parts of Units 22 and 23.

Region 2—Proposed customary and traditional use determinations for the Kenai Peninsula and proposed subsistence harvest regulations for the taking of moose on Federal lands in Unit 15.

The Regional Councils have been established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940–22964). The Regional Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act. The identified Regional Council meetings will be open to the public. The public is invited to attend these meetings, observe the proceedings, and provide comments to the Regional Councils.

Dated: June 15, 1995.

Mitch Demientieff,

Chair, Federal Subsistence Board.

[FR Doc. 95–15921 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–11–M; 4310–55–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK9–1–6975a; FRL–5223–1]

Approval and Promulgation of Implementation Plan for Vehicle Miles Traveled Forecasting and Tracking: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA today approves the State Implementation Plan (SIP) revision submitted by the State of Alaska for the purpose of forecasting and tracking vehicle miles traveled (VMT) in the Anchorage area. On March 24, 1994, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the Clean Air Act, as amended in 1990 (CAA).

Section 187(a)(2)(A) requires Moderate and Serious carbon monoxide (CO) non-attainment areas with a design value above 12.7 to submit a SIP revision that contains a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard (NAAQS) for CO to be attained. The SIP revision, which was due by November 15, 1992, also requires annual updates of the forecasts and specific contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date.

DATES: This action will be effective on August 28, 1995 unless adverse or critical comments are received by July 31, 1995. 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, EPA, Air & Radiation Branch (AT–082), 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, D.C. 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 ADEC, 410 Willoughby, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 187(a)(2)(A) of the Clean Air Act required EPA, in consultation with the U.S. Department of Transportation (DOT), to develop guidance for states to use in complying with the VMT forecasting and tracking provisions of section 187. A Notice of Availability for the resulting *Section 187 VMT Forecasting and Tracking Guidance* was published in the **Federal Register** on March 19, 1992.

The Section 187 Guidance identifies the Federal Highway Administration's Highway Performance Monitoring System (HPMS) as the foundation for VMT estimates and forecasts. HPMS was chosen as the best method for estimating actual VMT since it is a count-based, statistically-based, nationwide program with auditing procedures in place, and since travel demand models would require resource intensive, annual updates of input data and annual validation against traffic counts in order to be useful for estimating annual VMT. EPA believes that these time and resource requirements generally make travel demand models an unrealistic option for estimating actual annual VMT with reasonable accuracy.

To develop growth factors for forecasting VMT, the Section 187 Guidance offers as one alternative the use of network-based travel demand models. If these models are properly updated and validated, and if they use an equilibrium approach to allocating trips, they are considered to be the best predictor of growth factors for VMT forecasts. Moderate areas without a network model that is validated according to the specifications described in the Section 187 Guidance are offered the alternative of developing growth factors based on a linear regression extrapolation of the past six years' HPMS VMT. In both cases, the growth factors are applied to the HPMS VMT reported to the Federal Highway Administration.

As specified in the Act, the contingency measure triggers serve to address as early as possible any situation in which a trend towards higher than expected VMT has been detected, since such a trend may affect the forecasted attainment date.

When determining that actual annual VMT or a VMT forecast has exceeded the most recent prior forecast and, therefore, that contingency measures should be implemented, EPA believes that it is appropriate to take into account the statistical variability in the estimates of VMT generated through HPMS. Consequently, EPA has identified a margin of error to be applied when making VMT comparisons. With the expectation that HPMS sampling procedures will improve over the next few years in response to recent Federal Highway Administration guidance, the margin of error starts at 5.0 percent for VMT comparisons made in 1994, becomes 4.0 percent for VMT comparisons made in

1995, and is reduced to 3.0 percent for VMT comparisons made in 1996 and thereafter. However, since each revised VMT forecast becomes the VMT baseline for triggering contingency measures, the application of a margin of error every year could allow the forecasts to increase without bound, without ever triggering contingencies. To prevent this occurrence, EPA believes it is appropriate to allow the application of the margin of error only as long as, cumulatively, neither an estimate of actual VMT nor a VMT forecast ever exceed by more than 5.0 percent the VMT forecast relied upon in the area's attainment demonstration.

In practice, then, there are two ways in which an estimate of actual VMT or an updated forecast can be found to exceed a prior forecast. Individual yearly comparisons can result in an exceedance of the forecast made 12 months earlier by more than the prescribed percentage for that year, and exceedances can accumulate so that, cumulatively, they exceed the 5.0 percent cap above the attainment demonstration forecast.

EPA interprets the requirement for contingency measures to ''take effect without further action by the State or the Administrator'' to mean that no further rulemaking activities by the State or EPA would be needed to implement the measures. The *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990*, published in the **Federal Register** on April 16, 1992, offers guidance on the type and size of contingencies to be included in the SIP revision. This guidance is advisory in nature and is non-binding. (See 57 FR at 13532–33, April 16, 1992.)

The State of Alaska has submitted a SIP revision to EPA in order to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3). The State submittal provides for each of the following mandatory elements: (1) a forecast of VMT in the non-attainment area for each year prior to the attainment year; (2) a provision for annual updates of the forecasts along with a provision for annual reports describing the extent to which the forecasts proved to be accurate; these reports shall provide estimates of actual VMT in each year for which a forecast was required; (3) adopted and enforceable contingency measures to be implemented without further action by the State or the Administrator if actual annual VMT or an updated forecast exceeds the most recent prior forecast or if the area fails to attain the CO NAAQS by the attainment date.

II. Analysis

The following items are the basis for approval of the SIP revision. The State has met the requirements of sections 187(a)(2)(A) and 187(a)(3) by submitting a SIP revision that implements all required elements.

1. VMT Forecasts

Section 187(a)(2)(A) requires that the State include in its SIP submittal a forecast of VMT in the non-attainment area for each year before the year in which the SIP projects the National Ambient Air Quality Standard for CO to be attained. The forecasts are to be based on guidance developed by EPA in consultation with DOT, i.e., the *Section 187 VMT Forecasting and Tracking Guidance*. To accurately forecast VMT in the Anchorage area, The Municipality of Anchorage and the State Departments of Environmental Conservation and Transportation and Public Facilities used the HPMS. The Central Region portion of the Alaska HPMS database was expanded to contain most of the eligible roads in the Anchorage area, and the HPMS sampling methodology was applied to increase the accuracy of traffic estimates. This procedure resulted in an increase in the number of roads included in the database, and an increase in the number of sample sections on the roads. HPMS provides VMT estimates based on actual traffic counts collected from a representative set of sampling locations. The network-based travel demand modelling process described in *Section 187 VMT Tracking and Forecasting Guidance* was used to project future VMT for calendar years 1993, 1994 and 1995. The MinUPT travel demand model estimated growth in vehicle travel during the forecast period. This model is maintained by the Municipality of Anchorage Department of Economic Development and Planning. Demographic data (population, land use, and employment data) was used as inputs to the model. MinUTP model runs were performed for the base year 1990 and for future year 1995. Runs incorporated a population growth rate of roughly 1.2 percent per year. As a result of the modeling runs, VMT were projected to increase by 13.3 percent over the five-year period, or roughly 2.5 percent per year. VMT during intervening years was estimated from straight-line interpolation. Documentation on the model is contained in the *1985 Anchorage Metropolitan Area Transportation Model Report*. This annual VMT growth rate is more than double the projected increase in population for the same period. The use of a high ratio will provide a conservative estimate of future reductions in emissions and resulting air quality concentrations. A safety margin of 5.5 percent was added to the VMT forecasts. Best estimates of future-year VMT were increased by 5.5 percent. Attainment projections were prepared with this VMT included. For the 1990 base year, model estimates reflect the existing 1990 roadway network and the best available demographic data as inputs, and no safety margin is required.

Below is a table showing the forecasted VMT for Anchorage:

AVERAGE ANNUALIZED DAILY VMT FOR ANCHORAGE

Year	Projected VMT	Safety Margin (percent)	Forecasted VMT
1990	2,854,000	–0–	2,854,000
1993	3,081,530	+5.5	3,249,800
1994	3,157,373	+5.5	3,329,800
1995	3,233,216	+5.5	3,409,700

2. Annual VMT Updates/Reports

Section 187(a)(2)(A) specifies that the SIP revision provide for annual updates of the VMT forecasts and annual reports that describe the accuracy of the forecasts and that provide estimates of actual VMT in each year for which a forecast was required. The *Section 187 VMT Forecasting and Tracking Guidance* specifies that annual reports should be submitted to EPA by September 30 of the year following the year for which the VMT estimate is made.

Annual VMT tracking is done by the Alaska Department of Transportation and Public Facilities using the federally mandated and annually audited HPMS.

The 1990 base year VMT estimate was used as a ''starting point'' for future year VMT projections. The 1990 base year estimate of VMT and the VMT forecasts for future years are summarized in the Anchorage Air Quality Plan for Carbon Monoxide. Two additional reports provide primary support to the estimates contained in the Plan. The first report, *1990 Vehicle Miles of Travel in the Anchorage Bowl*, Alaska Department of Transportation and Public Facilities and the Municipality of Anchorage, February 1992, describes the methods used to generate HPMS estimates of base year VMT. The second report, *Anchorage Metropolitan Area 1990–1995 VMT Forecast Procedures*, July 1992, describes the methods and assumptions used in developing VMT forecasts. Both of these reports are contained in the Appendix to the Air Quality Plan.

In addition, Alaska has committed to meet the annual reporting procedures requirements. The reports will contain annual updates of the VMT forecasts, describe the accuracy of the forecasts, and provide estimates of actual VMT in each year for which a forecast was required. The reports will contain estimates of actual vehicle miles traveled in each year for which the forecast was required. The annual reports will show the comparison of the estimate of actual VMT and the previously forecasted VMT. The reports will show that Anchorage area's actual VMT is well within the forecasted VMT.

3. Contingency Measure

Section 187(a)(3) specifies that the State, in its SIP revision, adopt specific, enforceable contingency measures to be implemented if the annual estimate of actual VMT or a subsequent VMT forecast exceeds the most recent prior forecast of VMT or if the area fails to attain the CO NAAQS by the attainment date. Implementation of the identified contingency measures must not require further rulemaking activities by the State or EPA. Alaska meets this requirement. The contingency measure that will be used by Alaska to satisfy the VMT requirement is the expansion of the oxygenated fuel control area, and the State has amended its regulation 18 AAC 53.015, ''Expansion of Control Area,'' to provide for its implementation, if necessary. This amendment expands the oxygenated fuels' control area for Anchorage to include geographic areas outside of the municipality's boundaries, but within reasonable driving distances of the municipality. At this time, EPA is approving this contingency measure for the purpose of VMT exceedance.

III. Today's Action

In today's action, EPA is approving the SIP revision pertaining to VMT forecast which was submitted by the State of Alaska for the Anchorage area.

The State of Alaska has submitted a SIP revision implementing each of the required elements required by sections 187(a)(2)(A) and 187(a)(3) of the CAA for the Municipality of Anchorage: VMT forecasts, VMT updates/reports, and an enforceable contingency measure. If VMT projections are exceeded by actual VMT in future years, the implementation of the contingency measure will be triggered, together with a revision of the air quality plan, as required by the CAA. EPA is therefore approving this SIP revision.

IV. 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 August 28, 1995 unless, by July 31, 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 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 August 28, 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.

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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 August 28, 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, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

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

Dated: June 6, 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 C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(23) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(23) On March 24, 1994, ADEC submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the CAA, forecasting and tracking VMT in the Anchorage area.

(i) Incorporation by reference.

(A) March 24, 1994 letter from the Alaska Governor to the EPA Regional Administrator including as a revision to the SIP the VMT requirement in the Anchorage area, contained in ADEC's State Air Quality Control Plan, Volume III: Appendices, Modifications to Section III.B.6, III.B.8, III.B.10 and III.B.11, adopted January 10, 1994; and further description on pages 10–14, 57–60 and 69–75 contained in ADEC's State Air Quality Control Plan, Volume III: Appendices, Modifications to Section III.B, III.B.1, and III.B.3, adopted January 10, 1994.

[FR Doc. 95–15954 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[ME–23–1–6827a; ME–4–1–6848; A–1–FRL–5214–4]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Marketing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on July 6, 1994. This revision consists of several regulations which require the implementation of reasonably available control technology (RACT) for controlling volatile organic compound (VOC) emissions from gasoline marketing operations. The intended effect of this action is to approve the gasoline marketing regulations submitted by Maine on July 6, 1994 into the Maine SIP. Some of these regulations are being approved as a direct final action, while others are being approved as a final rulemaking action. This action is being taken in accordance with the Clean Air Act.

DATES: Section 52.1020(c)(35) will become effective July 31, 1995. Section 52.1020(c)(36) and the amendments to §§ 52.1022 and 52.1031 will become effective August 28, 1995, unless notice is received by July 31, 1995 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments on Section 52.1020(c)(36) may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., (LE–131), Washington, D.C. 20460; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 11, 1994, EPA received a formal State Implementation Plan (SIP) submittal from the Maine Department of Environmental Protection (DEP) containing the following regulations:

Chapter 100 ''Definitions Regulation''
Chapter 112 ''Petroleum Liquids Transfer Vapor Recovery''
Chapter 118 ''Gasoline Dispensing Facilities Vapor Control''
Chapter 120 ''Gasoline Tank Truck Tightness Self-Certification''
Chapter 133 ''Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants''

These regulations had been recently adopted (or amended) pursuant to the requirements of Sections 182(b)(2) and 184(b)(1)(B) of the Clean Air Act (CAA).

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a ''presumptive norm'' for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under Section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under Section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, portions of Maine were designated as rural nonattainment (i.e., the Metropolitan Portland Intrastate Air Quality Control Region (AQCR) and the Androscoggin Valley Interstate AQCR) and, therefore, were required to adopt

regulations pursuant to the Group I and Group II CTGs for major sources. Based on monitored ozone exceedances in Maine, EPA notified the Governor of Maine on May 25, 1988 and November 8, 1988 that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. §§ 7401–7671q. In amended Section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Pursuant to the amended CAA, two counties in Maine were classified as marginal (these two counties constitute one marginal ozone nonattainment area) and seven counties in Maine were classified as moderate (these seven counties constitute three moderate ozone nonattainment areas). 56 FR 56694 (Nov. 6, 1991). In response to the RACT fix-up requirement, Maine submitted revisions to its SIP and EPA approved these revisions on February 3, 1992 and March 22, 1993 (57 FR 3946 and 58 FR 15281).

In addition, Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the Section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement requires nonattainment areas that previously were exempt from certain RACT requirements to ''catch up'' to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. As previously mentioned, the State of Maine contains three moderate ozone nonattainment areas. These areas are thus subject to the Section 182(b)(2) RACT catch-up requirement.

Also, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to Section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented in the entire state for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Since Maine had previously submitted regulations for only bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources pursuant to the RACT fix-up requirement, in order to meet the RACT catch-up requirement, the State must, therefore, adopt regulations (or affirm that no sources exist) for the remaining 26 CTG categories as well as adopt rules for all major non-CTG sources. (Rules for non-CTG sources are not part of this SIP revision. These rules will addressed in a separate action and, therefore, will not be further discussed in this document.)

In response to the RACT catch-up requirement, on May 14, 1992 and June 12, 1992, Maine submitted negative declarations for 15 CTG categories. Maine then proceeded with the process of adopting regulations to control the remaining CTG categories which included surface coating processes, solvent metal cleaning, graphic arts operations, the use of cutback asphalt, and gasoline marketing operations. On January 13, 1993, Maine submitted a SIP submittal containing regulations for surface coating processes, solvent metal cleaning, graphic arts operations, and the use of cutback asphalt. These regulations were approved into the Maine SIP on June 16, 1994 (59 FR 31154). Maine's gasoline marketing RACT catch-up regulations were not included in the State's January 13, 1993 submittal. On July 6, 1994, Maine submitted a formal SIP revision containing its gasoline marketing regulations. EPA's evaluation of this SIP submittal is summarized below.

EPA's Evaluation of Maine's Submittal

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in Section 110 and Part D of the Act and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in: (1) Those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); (2) the document entitled ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); (3) the existing CTGs; and (4) the ''Model Volatile Organic Compound Rules for Reasonably Available Control Technology'' issued as a staff working draft in June of 1992. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The VOC regulations that are included in Maine's July 6, 1994 SIP submittal are briefly summarized below.

Chapter 100: Definitions Regulation

This regulation was amended by adding or revising definitions of the following terms: bulk gasoline plant, gasoline, leak, tank truck, and vapor control system.

Chapter 112: Petroleum Liquids Transfer Vapor Recovery

This regulation requires bulk gasoline terminals which load tank trucks and have a daily throughput of greater than 20,000 gallons to install a vapor control system. This regulation also prohibits bulk terminals from loading gasoline into a tank truck unless the truck has been certified as vapor-tight pursuant to the requirements in Maine's Chapter 120. Chapter 112 was amended to no longer exempt tank trucks with a total capacity of less than or equal to 3500 gallons.

Chapter 118: Gasoline Dispensing Facilities Vapor Control

This regulation requires gasoline dispensing facilities with a throughput of 10,000 gallons or more per month to install and operate a Stage I vapor balance system. Also, all gasoline dispensing facilities, regardless of throughput, must install submerged fill pipes.

Chapter 120: Gasoline Tank Truck Tightness Self-Certification

This regulation requires gasoline tank trucks to undergo annual vapor tightness testing.

Chapter 133: Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants

This regulation requires bulk gasoline plants with a throughput of 4000 gallons or more per day to install and operate a vapor balance system.

EPA has evaluated Maine's gasoline marketing regulations and has found that they are consistent with EPA model regulations and the following CTG documents: ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals'' (EPA–450/2–77–026); ''Control of Volatile Organic Compound Leaks from Gasoline Tank Trucks and Vapor Collection Systems'' (EPA–450/2–78–051); ''Control of Volatile Organic Emissions from Bulk Gasoline Plants'' (EPA–450/2–77–035); and ''Hydrocarbon Control Strategies for Gasoline Marketing Operations'' (EPA–450/3–78–017). As such, EPA believes that the submitted rules constitute RACT for the applicable sources.

Maine's gasoline marketing regulations and EPA's evaluation are detailed in a memorandum, dated December 29, 1994, entitled ''Technical Support Document—Maine—Gasoline Marketing Regulations.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

EPA's Previous NPR

Previously, EPA published a notice of proposed rulemaking (NPR) for Maine's Chapter 120 tank truck regulation (57 FR 12791). EPA's NPR proposed approval of Chapter 120 on the condition that Maine address certain outstanding issues prior to final rulemaking. The issues outlined in EPA's NPR and Maine's response are summarized below.

1. The NPR noted that the term ''vapor control system'' was not used consistently throughout Chapter 120. Chapter 120(3)(B) alternatively used the term ''vapor recovery system'' which was not defined. The NPR stated that the State should change this term to ''vapor control system'' or define the term ''vapor recovery system.'' In response to this issue, Maine has revised Chapter 120 so that the term ''vapor control system'' is used consistently throughout the regulation.

2. The NPR noted that Chapter 120(3)(A)(2) stated that the certification test approval expires June 1 of the year following the test. In some cases, the June 1 date would allow trucks to go longer then 12 months without a test. As stated in the NPR, such a provision is inconsistent with Maine's Chapter 112(3)(A) which requires that the truck has been certified within the last 12 months. The June 1 expiration date is also inconsistent with Chapter 120(4)(B) which requires that a certified tank truck must remain leak-tight for the 12 months following the certification test. For these reasons, EPA's NPR stated that Maine must either amend Chapter 120(3)(A)(2) to read ''expires 12 months after the certification test,'' or the State must change the above referenced sections which are inconsistent with the June 1 expiration date. In response to this issue, Maine has amended Section 3(A)(2) of Chapter 120 to read ''expires 12 months after the certification test.''

3. Chapter 120(5) requires that the Department be informed at least 24 hours in advance of each certification test. EPA's NPR stated that DEP should require earlier notification of the intent to test, so that the State can have the opportunity to monitor the test. The NPR also noted that EPA's model rules suggest that the State be notified in writing at least 10 days in advance of the test. Maine did not revise Chapter 120 to require earlier notification, however, the revised rule does require that the person conducting the test be registered with the DEP. The State and industry both report that this arrangement is working well. EPA, therefore, considers the testing requirements of Maine's revised Chapter 120 regulation approvable.

4. Finally, EPA's NPR noted that when Maine adopts a bulk gasoline plant regulation, Chapter 120 must be amended to apply to trucks that exclusively service bulk plants. Since the publication of EPA's NPR, Maine has adopted a bulk gasoline plant rule and the State has made the necessary changes to Chapter 120 so that it also applies to tank trucks that exclusively service bulk plants.

As outlined above, Maine has satisfactorily addressed the outstanding issues listed in EPA's previous NPR.

In addition, EPA received two comment letters pursuant to the publication of the Chapter 120 NPR. A summary of the comments received and EPA's response are outlined below.

The Maine Oil Dealers Association (MODA) submitted comments regarding Maine's Chapter 120 certification testing requirements. As previously noted, EPA's NPR stated that Maine should require earlier than 24 hour notification of the intent to test, so that the DEP can have an opportunity to monitor the test. The NPR also noted that EPA's model rules suggest that the State be notified in writing at least 10 days in advance of the test. MODA commented that the 24 hour notice required by Maine's Chapter 120 is adequate notice and that, because of the day to day variations in market demand, it is both unusual and difficult to schedule tank truck testing 10 days in advance.

As previously mentioned, Maine did not revise Chapter 120 to require earlier notification, however, the revised rule included in the State's July 6, 1994 SIP submittal does require that the person conducting the test be registered with the DEP. The State and industry both report that this arrangement is working well. EPA is, therefore, approving the testing requirements of Maine's revised Chapter 120 regulation.

The U.S. Small Business Administration (SBA) also submitted comments pursuant to EPA's NPR. The SBA commented that in EPA's proposal of Maine's Chapter 120 compliance with the Regulatory Flexibility Act was inadequate. SBA noted that, although the NPR stated the proposed action would not have a significant impact on a substantial number of small entities, the notice did not provide an explanation for such a certification. SBA also had expressed similar concerns with **Federal Register** notices prepared by other EPA Regional Offices. In response to SBA's comments, this issue was addressed nationally by EPA's Regional Operations Branch. EPA's justification is addressed fully at the end of this notice. However, the central rationale for the above-mentioned certification is that 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, it does not have a significant impact on any small entities affected.

As stated above, Maine has satisfactorily addressed the issues raised in EPA's NPR and comments received pursuant to the NPR have also been addressed. EPA is, therefore, approving Maine's Chapter 120 tank truck tightness regulation as a revision to the Maine SIP.

In addition, as was previously stated, EPA has also evaluated the other gasoline marketing regulations included in Maine's July 6, 1994 SIP submittal and has found that they are consistent with EPA model regulations and the applicable CTG documents. EPA is, therefore, approving Maine's Chapters 100, 112, 118, and 133 without prior proposal because the Agency views these rules as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to

approve these rules should adverse or critical comments be filed. Approval of these rules will be effective August 28, 1995 unless by July 31, 1995 adverse or critical comments are received.

If the EPA receives such comments, approval of Maine's Chapters 100, 112, 118, and 133 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 August 28, 1995.

Final Action

EPA is approving Maine's Chapter 100 ''Definitions Regulation,'' Chapter 112 ''Petroleum Liquids Transfer Vapor Recovery,'' Chapter 118 ''Gasoline Dispensing Facilities Vapor Control,'' Chapter 120 ''Gasoline Tank Truck Tightness Self-Certification,'' and Chapter 133, ''Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants'' as meeting the requirements of Sections 182(b)(2) and 184(b) of the CAA for the following categories of VOC sources: gasoline bulk terminals, gasoline tank trucks, gasoline bulk plants, and gasoline dispensing facilities. EPA is also revising a section of the code, Section 52.1022, that is outdated due to the enactment of the CAAA of 1990.

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. A future document will inform the general public of these tables. 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., 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).

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

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 August 28, 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, Hydrocarbons, Incorporation by reference, and Ozone.

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

Dated: May 19, 1995.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of 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 U—Maine

2. Section 52.1020 is amended by adding paragraphs (c)(35) and (c)(36) to read as follows:

§ 52.1020 Identification of plan.

* * * * *

(c) * * *

(35) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 3, 1991, November 25, 1991, and July 6, 1994.

(i) Incorporation by reference.

(A) Letters from the Maine Department of Environmental Protection dated June 3, 1991, November 25, 1991, and July 6, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 120 of the Maine Department of Environmental Protection Regulations, ''Gasoline Tank Truck Tightness Self-Certification,'' effective in the State of Maine on July 11, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

(36) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on July 6, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated July 6, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 100 of the Maine Department of Environmental Protection Regulations, ''Definitions,'' effective in the State of Maine on July 11, 1994, with the exception of the definitions of the following terms: ''curtailment,'' ''federally enforceable,'' ''major modification,'' '' major source,'' ''nonattainment pollutant,'' ''shutdown,'' ''significant emissions,'' and ''significant emissions increase.''

(C) Chapter 112 of the Maine Department of Environmental Protection Regulations, ''Petroleum Liquids Transfer Vapor Recovery,'' effective in the State of Maine on July 11, 1994.

(D) Chapter 118 of the Maine Department of Environmental Protection Regulations, ''Gasoline Dispensing Facilities Vapor Control,'' effective in the State of Maine on July 11, 1994.

(E) Chapter 133 of the Maine Department of Environmental Protection Regulations, ''Petroleum Liquids Transfer Vapor Recovery at Bulk Gasoline Plants,'' effective in the State of Maine on July 11, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

§ 52.1022 [Amended]

3. Section 52.1022 is amended by removing all of the text in this section, with the exception of the first sentence.

4. In § 52.1031, Table 52.1031 is amended by adding new entries to existing state citations for Chapter 100 and Chapter 112 and by adding new state citations for Chapter 118, Chapter 120 and Chapter 133 to read as follows:

§ 52.1031 EPA-Approved Maine Regulations.

* * * * *

TABLE 52.1031.—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020	
*	*	*	*	*	*	*
100	Definitions	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	Gasoline marketing definitions added
*	*	*	*	*	*	*
112	Petroleum liquids transfer recover.	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	Deleted exemption for tank trucks less than 3500 gallons
*	*	*	*	*	*	*
118	Gasoline Dispensing Facilities.	6/22/94	June 29, 1995.	[Insert *FR* citation from published date.	36	
*	*	*	*	*	*	*
120	Gasoline Tank Trucks	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	35	
*	*	*	*	*	*	*
133	Gasoline Bulk Plants	6/22/94	June 29, 1995.	[Insert *FR* citation from published date].	36	

[FR Doc. 95–15957 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[WA–29–1–6724, WA–30–1–6725, WA–31–1–6853, WA–37–1–6952; FRL–5218–2]

Approval and Promulgation of Implementation Plans: Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to procedures described at 54 FR 2214 (January 19, 1989), EPA has recently approved a number of minor State implementation plan (SIP) revisions submitted by the Washington Department of Ecology (WDOE), namely local air pollution control agency regulations from Puget Sound Air Pollution Control Agency (PSAPCA) and a recodification of WDOE's SIP table of contents. This document lists the revisions EPA has approved and incorporates the relevant material into the Code of Federal Regulations.

EFFECTIVE DATE: June 29, 1995.

ADDRESSES: Copies of the State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: EPA, Region 10, Air and Radiation Branch, Docket #WA–29–1–6724, WA–30–1–6725, WA–31–1–6853, WA–37–1–6952), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION: Montel Livingston, Air & Radiation Branch (AT–082), EPA, Seattle, Washington 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: EPA Region 10 has approved the following minor SIP revision requests under section 110(a) of the Clean Air Act (Act):

State	Subject matter	Date of submission	Date of approval
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Updates amendments to be consistent with the federal air quality standards, repeals unused definitions, adds new definitions, clarifies applicability of requirements, etc.	5–9–94	11–16–94
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Same reasons as above.	6–2–94	11–16–94
WA	Various revised amendments to SIP affecting PSAPCA's regulations I, II, and III. Same reasons as above.	12–13–94	1–11–95
WA	Recodification of SIP Table of Contents	2–6–95	3–27–95

EPA has determined that each of these SIP revisions complies with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been ''unnecessary and contrary to the public interest,'' and hence, was not required by the Administrative Procedure Act, 5

U.S.C. section 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

The Office of Management and Budget has exempted all SIP approvals from the requirements of section 3 of Executive Order 12866.

Under 5 U.S.C. 605(b), I certify that these SIP revisions will not have a significant impact on a substantial number of small entities. See 46 FR 8709.

Under section 307(b)(1) of the Act, as amended, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of this publication date. These actions may not be challenged later in proceedings to enforce their requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements:

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: May 16, 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) (53) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(53) Various minor revisions consisting of amended regulations affecting a local air agency, the Puget Sound Air Pollution Control Agency, and a recodified Table of Contents for the SIP were submitted to EPA from WDOE for inclusion into the Washington SIP.

(i) Incorporation by reference.

(A) Letters dated April 28, May 25, and December 5, 1994 from the Director of the Washington State Department of Ecology to the EPA Regional Administrator submitting minor revisions to PSAPCA's regulations for inclusion into the SIP: Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on May 4, 1994; Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on May 25, 1994; and Puget Sound Air Pollution Control Agency, Regulations I, II, and III, adopted on December 8, 1994.

(B) Letter dated January 26, 1995 from the Director of the Washington State Department of Ecology to the EPA Regional Administrator submitting the Recodified SIP Table of Contents, dated January 1995, and adopted on February 1, 1995.

* * * * *

3. Section 52.2479 is revised to read as follows:

§ 52.2479 Contents of the federally approved, state submitted implementation plan.

The following sections of the state and local regulations and documents for the Washington State Implementation Plan for Air Quality, for compliance with requirements of the Federal Clean Air Act, have been approved by the U.S. Environmental Protection Agency (EPA), and are part of the current federally-approved, implementation plan.

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS

Section 1—General [Dates in brackets indicate EPA approval date]

Section 2—State Regulations and Statutes [Dates in brackets indicate date state adopted]

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

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WASHINGTON STATE IMPLEMENTATION PLAN FOR AIR QUALITY STATE AND LOCAL REQUIREMENTS TABLE OF CONTENTS—Continued

Section 5—Federally Mandated Programs [Dates in brackets indicate EPA approval date]

5.BAP Business Assistance Program [05/08/95]
5.IM Motor Vehicle Inspection/Maintenance [06/05/80]
5.OXY Oxygenated Gasoline Program [01/20/94]
5.SMP Smoke Management Program [05/04/87]
5.VIS Washington State Visibility Protection Program [05/04/87]
5.VIS.NSR Visibility New Source Review (NSR) for nonattainment areas for Washington [06/26/86]

Supplemental Section A—Reference Material [Dates in brackets indicate EPA approval date]

A.1 Description of Source Test Program for the State Implementation Plan [10/24/84]

Supplemental Section B—Administrative and Procedural Material [Dates in brackets indicate EPA approval date]

B.3 Correspondence
B.3.1 Legal Authority [06/05/80]
B.3.2 Correspondence—Prior to 1991
B.3.2.1 New Source Performance Standards (NSPS) for Tri-Counties [09/23/81]

[FR Doc. 95–15956 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[OH87–1–7075a; FRL–5227–1]

Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and the Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Direct final rule.

SUMMARY: The USEPA is determining, through direct final procedure, that the Cleveland ozone nonattainment area (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami, and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality-assured, ambient air monitoring data for the 1992 to 1994 ozone seasons that demonstrate that the ozone NAAQS has been attained in each of these areas. On the basis of this determination, USEPA is also determining that certain reasonable-further-progress (RFP) and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the Cleveland, Toledo, Dayton and Cincinnati areas for so long as these areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, USEPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, USEPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective on August 14, 1995 unless notice is received by July 31, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and USEPA's analysis are available for inspection at the following location (it is recommended that you contact Richard Schleyer at (312) 353–5089 before visiting the Region 5 office): United States Environmental Protection Agency, Region 5, Air Enforcement Branch, 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), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Regulation Development Section, Air Enforcement Branch (AE–17J), Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (Act) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. The USEPA believes it is reasonable to interpret provisions regarding RFP and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality-assured, air quality monitoring data). As described below, USEPA has previously interpreted the general provisions of subpart 1 of part D of Title I (Sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, entitled ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment

Areas Meeting the Ozone National Ambient Air Quality Standard,'' dated May 10, 1995, USEPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, Section 171(1) of the Act states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.'' Thus, whether dealing with the general RFP requirement of Section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and USEPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of Section 182(b)(1).

The USEPA notes that it took this view with respect to the general RFP requirement of Section 172(c)(2) in the General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, USEPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564)[2]

Second, with respect to the attainment demonstration requirements of Section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, USEPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain Section 172(c) requirements provided by USEPA in the General Preamble to Title I. As USEPA stated in the Preamble, no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under Section 175A.

Similar reasoning applies to other related provisions of subpart 2. The first of these are the contingency measure requirements of Section 172(c)(9) of the Act. The USEPA has previously interpreted the contingency measure requirement of Section 172(c)(9) as no longer being applicable once an area has attained the standard since those ''contingency measures are directed at ensuring RFP and attainment by the applicable date.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6)

The USEPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If USEPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The USEPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which USEPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant USEPA guidance and recorded in USEPA's—Aerometric Information Retrieval System (AIRS).

These determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the area to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully approved maintenance plan. Please note that redesignation requests have been submitted for the Cleveland, Toledo, Dayton and Cincinnati areas. These redesignation requests are being evaluated in separate rulemaking actions.

Furthermore, the determinations made in this notice do not shield an area from future USEPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, any other States with respect to the NAAQS (see section 110(a)(2)(D)). The USEPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) of the Act to require such emission reductions if necessary and appropriate to deal with transport situations.

Analysis of Air Quality Data

The USEPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR Part 58 and recorded in AIRS) for

[1] USEPA notes that paragraph (1) of subsection 182(b) is entitled ''PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''REASONABLE FURTHER PROGRESS DEMONSTRATION,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

the Cleveland, Toledo, Dayton, and Cincinnati ozone nonattainment areas in the State of Ohio from the 1992 through 1994 ozone seasons.[3] The following ozone exceedances were recorded for the period from 1992 to 1994 (the average number of expected exceedances for this three year period are also presented):

Cleveland: Medina County, 6364 Deerview Lane (1994) - 0.127 ppm; average expected exceedances: 0.5 (based only on two years of monitoring data). Cuyahoga County, 891 E. 152 St. (1993) - 0.126 ppm, (1994) 0.127 ppm and 0.125 ppm; average expected exceedances: 1.0.

Cincinnati-Hamilton Interstate Area: Ohio Portion: Butler County, Schuler and Bend (1993) - 0.131 ppm; average expected exceedances: 0.3. Hook Field Municipal (1993) - 0.138 ppm; average expected exceedances: 0.3. Clermont County, 389 Main St. (1994) - 0.128 ppm; average expected exceedances: 0.3. Warren County, Southeast St. (1994) - 0.139 ppm and 0.128 ppm; average expected exceedances: 0.7.

Kentucky Portion: Campbell County, 9th and Maple (1993) - 0.126 ppm; average expected exceedances: 0.3.

Toledo: Lucas County, 306 N. Yondota (1993) 0.126 ppm, (1994) 0.142 ppm; average expected exceedances: 0.7. Friendship Park (1993) 0.126 ppm; average expected exceedances: 0.3.

Dayton: Clark County, 5171 Urbana Road (1994) 0.125 ppm; average expected exceedances: 0.5. Montgomery County, 2100 Timberlane (1993) 0.125 ppm; average expected exceedances: 0.3.

On the basis of this review, USEPA has concluded that these areas have attained the ozone standard during the 1992–94 period and continues to attain the standard at this time.

15% Plan/Attainment Demonstration Submittal Status

On March 14, 1994, the State of Ohio submitted revisions to the ozone portion of the Ohio SIP which included fifteen percent rate of progress plans for the Toledo, Dayton, Cleveland and Cincinnati ozone nonattainment areas. These fifteen percent plans were deemed complete by USEPA on August 8, 1994. Also included in this SIP revision were attainment demonstrations for the Toledo, Dayton and Cleveland ozone nonattainment areas. These attainment demonstrations were deemed complete on September 14, 1994. Upon the effective date of this determination, the State may withdraw these SIP revisions.

If Ohio withdraws the submitted 15 percent plan or attainment demonstration for Cleveland and Cincinnati areas through the submission of a letter from the Governor or his or her designee, the motor vehicle emissions budget test would no longer apply for conformity purposes in that area[4]. The build/no-build and less than-1990 test would apply until a maintenance plan is approved. This is because the area would not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the submitted SIP is not withdrawn, the budget in that submission will continue to apply for conformity purposes.

However, areas that are already demonstrating conformity to a submitted maintenance plan pursuant to section 51.448(i) (Toledo and Dayton) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build and less-than 1990 tests will apply until the maintenance plan is approved.

Conclusion

The USEPA has determined that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time.

As a consequence of this determination that the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures will not be applicable to the area so long as the area does not violate the ozone standard.

It should be emphasized that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected area. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton and Cincinnati ozone nonattainment areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), USEPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area(s) would thereafter have to address the requirements of section 182(b)(1) and 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

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

This action will become effective on August 14, 1995. However, if USEPA receives adverse comments by July 31, 1995, then USEPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

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 exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, USEPA must

[3] The Cincinnati-Hamilton Interstate Area includes the following counties in Ohio: Butler, Clermont, Hamilton and Warren; and the following counties in Kentucky: Boone, Campbell and Kenton. If a violation were monitored in the Kentucky portion of the interstate area (or the Ohio portion of the Interstate area) these nonattainment area provisions would then be applicable.

[4] For Toledo and Dayton, the Ohio Department of Transportation and metropolitan planning organizations demonstrated conformity to the 15 percent plan and attainment demonstration motor vehicle emissions budgets for illustrative purposes in 1994. The USEPA provided written guidance to the Ohio Department of Transportation and the Ohio Environmental Protection Agency that the submitted maintenance plans for Toledo and Dayton were to be used in lieu of the 15 percent plans and attainment demonstrations in letters dated July 1, 1994, and May 9, 1995. Ohio may withdraw the 15 percent plan and attainment demonstrations submitted for the Dayton and Toledo areas. This will not affect USEPA's interpretation of the applicability of these SIPs for conformity purposes.

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. Today's determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the 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 USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA*, 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.

The USEPA's final action does not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, USEPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

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 August 14, 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

Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 14, 1995.

David A. Kee,

Acting Regional Administrator.

Part 52, chapter 1, 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 KK—Ohio

2. Section 52.1885 is amended by adding new paragraph (w) to read as follows:

§ 52.1885 Control Strategy: Ozone.

* * * * *

(w) Determination—USEPA is determining that, as of May 31, 1995, the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler, Clermont, Hamilton and Warren) ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of Section 182(b)(1) and related requirements of Section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cleveland, Toledo, Dayton or Cincinnati-Hamilton Interstate (ambient air monitoring data shall be reviewed for all monitors located in the interstate nonattainment area which includes the State of Kentucky Counties of Boone, Campbell, and Kenton) ozone nonattainment area(s), this determination(s) shall no longer apply.

[FR Doc. 95–15959 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT20–3–6773a; FRL–5212–4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; 1990 Base Year Carbon Monoxide Emission Inventories for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the 1990 base year carbon monoxide (CO) emission inventories for Ogden City, Salt Lake City, and Utah County (which includes Provo-Orem) that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990.

DATES: This final rule will be effective August 28, 1995, unless adverse or critical comments are received by July 31, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

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

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

SUPPLEMENTARY INFORMATION: Section 110(a)(2)(H)(i) of the CAA provides the State the opportunity to update its State Implementation Plan (SIP) as needed or to address new statutory requirements. The State is utilizing this authority to include the Ogden City, Salt Lake City, and Utah County 1990 base year CO emission inventories as part of the SIP.

I. Background

As required by the CAA, States have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas toward attainment. The CAA (section 187(a)(1)) required CO nonattainment areas classified as moderate or serious to submit a 1990 base year CO inventory

that represents actual emissions, that occurred in the CO season, by November 15, 1992. This requirement applies to Ogden City and Utah County. In addition, moderate CO nonattainment areas with a design value of 12.7 ppm CO or more were required to submit a plan by November 15, 1992, that demonstrates attainment of the CO NAAQS by December 31, 1995. ''Not Classified'' CO nonattainment areas, such as Salt Lake City, were required to submit a 1990 base year emission inventory by November 15, 1993 (refer to the General Preamble to Title I of the CAA, 57 FR 13529, dated April 16, 1992, and 57 FR 18070, dated April 28, 1992).

To prepare the attainment demonstration for CO nonattainment areas classified as moderate or serious, a 1990 base year and projected modeling inventories are needed. The 1990 base year inventory is the primary inventory from which the periodic and modeling inventories are derived. Further information on these inventories and their purpose can be found in the document ''Emission Inventory Requirements for Carbon Monoxide State Implementation Plans,'' U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, dated March, 1991.

The air quality planning requirements for CO nonattainment areas are set out in sections 187(a)(1), (a)(5), (a)(7), and 187(d)(1) of Title I of the CAA. EPA previously issued a General Preamble describing EPA's preliminary views on how EPA intended to review SIP revisions submitted under Title I of the CAA, including requirements for the preparation of the 1990 base year inventory (refer to 57 FR 13529, dated April 16, 1992, and 57 FR 18070, dated April 28, 1992). Because EPA is describing its interpretations in this action only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale.

Those States containing moderate and serious carbon monoxide nonattainment areas were required under Section 182(a)(1) of the CAA to submit by November 15, 1992, a comprehensive, accurate, and current inventory of actual CO season emissions from all sources for each nonattainment area (also, refer to 57 FR 13530, dated April 16, 1992). Classified'' CO nonattainment areas were required to submit their inventories by November 15, 1993 (refer to 57 FR 13535, dated April 16, 1992). Stationary point, stationary area, on-road mobile, and non-road mobile sources of carbon monoxide (CO) were to be included in each inventory. This inventory was for calendar year 1990 and was denoted as the base year inventory. The inventory was to address actual CO emissions for the area during the peak CO season. The peak CO season should reflect the months when peak CO air quality concentrations occur. For areas where winter is the peak CO season, as is the case for Ogden City, Salt Lake City, and Utah County, the 1990 base year inventory included the period December 1989 through February 1990. Available guidance for preparing emission inventories was provided in the General Preamble (refer to 57 FR 13498, dated April 16, 1992).

II. Analysis of the State's Submittal

Section 110(k) of the Act sets out provisions governing EPA's review of CO 1990 base year emission inventory submittals in order to determine approval or disapproval for the requirements of section 187(a)(1) and section 172(c) (also, refer to 57 FR 13565–66, April 16, 1992). EPA is approving the CO 1990 base year emission inventories for Ogden City, Salt Lake City, and Utah County, Utah as submitted to EPA in a letter July 11, 1994, based on EPA's Level I, II, and III review findings. The following describes the review procedures associated with determining the acceptability of a 1990 base year emission inventory and discusses the levels of acceptance or disapproval that can result from the findings of the review process.

A. Procedural Background

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA provides that each SIP revision (including emission inventories) be adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA.[1] CO nonattainment areas with design values greater than 12.7 ppm were required to submit the entire SIP revision (1990 base year emissions inventory, attainment demonstration, and control strategies) by November 15, 1992 (i.e., Utah County). CO areas with design values of 12.7 ppm and below were required to submit a 1990 base year emissions inventory by November 15, 1992 (i.e., Ogden City). ''Not Classified'' CO nonattainment areas (i.e., Salt Lake City) were required to submit a 1990 base year emissions inventory by November 15, 1993 (refer to section 107(d)(1)(C) and section 172(c) of the CAA, 56 FR 56694, and the interpretation at 57 FR 13535).[2]

The State of Utah held a public hearing on May 5, 1994, for the entire CO SIP revision which also contained the 1990 base year emission inventories for Ogden City, Salt Lake City, and Utah County. The CO SIP revision (including the inventories) was adopted by the State on July 1, 1994, with an effective date of August 31, 1994. The Governor submitted the CO SIP revision, which included the 1990 base year inventories, to EPA in a letter dated July 11, 1994.

Utah's CO SIP revision was reviewed by EPA and found to be complete on July 15, 1994.

B. Review of Utah's Base Year SIP CO Inventories

EPA's Level I, II, and III review process checklists are used to determine if all components of a CO base year inventory are present and approvable. EPA's detailed Level I and II review procedures can be found in the following document; ''Quality Review Guidelines for 1990 Base Year Emission Inventories'', U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. The Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions ''1990 O_3/CO SIP Emission Inventory Level III Acceptance Criteria'', October 7, 1992[3] and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.[4] EPA's review also evaluates the level of supporting documentation provided by the State and assesses whether the emissions were developed, and data quality assured, according to current EPA guidance.

The Level III review process is outlined below and consists of nine requirements that a CO base year inventory must include. For a base year CO emission inventory to be acceptable

[1] Memorandum from John Calcagni, Director, Air Quality Management Division, and William G. Laxton, Director, Technical Support Division, to Regional Air Division Directors, Region I–X, ''Public Hearing Requirements for 1990 Base-Year Emission Inventories for Ozone and Carbon Monoxide Nonattainment Areas,'' September 29, 1992.

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] Memorandum from J. David Mobley, Chief, Emissions Inventory Branch, to Air Branch Chiefs, Region I–X, ''Final Emission Inventory Level III Acceptance Criteria,'' October 7, 1992.

[4] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Region I–X, ''Emission Inventory Issues,'' June 24, 1993.

it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) was provided and the Quality Assurance (QA) program contained in the IPP was performed and its implementation documented. Analysis: Utah's IPP was approved by EPA on April 2, 1992. The IPP's QA program requirements were addressed in Section 4. of the Ogden City inventory, in Section 4. of the Salt Lake City inventory, and in Section 4. of the Utah County inventory.

2. Adequate documentation was provided that enabled the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory. Analysis: This requirement was addressed in Sections 1. through 10. in each of the three CO inventories.

3. The point source inventory must be complete.

Analysis: This requirement was addressed in Section 7. of the Utah County inventory. There are no CO major point sources (equal to or greater than 100 tons per year of CO) located in the Ogden City or Salt Lake City CO nonattainment areas.

4. Point source emissions must have been prepared or calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 7. of the Utah County inventory.

5. The area source inventory must be complete.

Analysis: This requirement was addressed in Section 5. of the Ogden City inventory, Section 5. of the Salt Lake City inventory, and Section 5. of the Utah County inventory.

6. The area source emissions must have been prepared or calculated according to the current EPA guidance.

Analysis: This requirement was addressed in Section 5. of the Ogden City inventory, Section 5. of the Salt Lake City inventory, and Section 5. of the Utah County inventory.

7. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, ''Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources'', U.S. Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods were adequately described and documented in the inventory report.

Analysis: This requirement was addressed in Section 6.1 of the Ogden City inventory, Section 6.1 of the Salt Lake City inventory, and Section 6.1 of the Utah County inventory.

8. The MOBILE model (or EMFAC model for California only) was correctly used to produce emission factors for each of the vehicle classes.

Analysis: This requirement was addressed in Section 6.1 of the Ogden City inventory, Section 6.1 of the Salt Lake City inventory, and Section 6.1 of the Utah County inventory.

9. Non-road mobile emissions were prepared according to current EPA guidance for all of the source categories.

Analysis: This requirement was addressed in Sections 6.2.1, 6.2.2, and 6.2.3 of the Ogden City inventory, Sections 6.2.1, 6.2.2, and 6.2.3 of the Salt Lake City inventory, and Sections 6.2.1, 6.2.2, and 6.2.3 of the Utah County inventory.

Final Action

EPA is approving the carbon monoxide 1990 base year emission inventories for Ogden City, Utah State Implementation Plan, Section IX, Part C.3., Table IX.C.5; Salt Lake City, Utah State Implementation Plan, Section IX, Part C.3., Table IX.C.4; and Utah County, Utah State Implementation Plan, Section IX, Part C.6., Table IX.C.10. These inventories were submitted by the Governor in a letter dated July 11, 1994.

The 1990 base year CO emissions from point sources, area sources, on-road mobile sources, and non-road mobile sources for Ogden City, Salt Lake City, and Utah County are summarized in the following table:

CARBON MONOXIDE SEASONAL EMISSIONS

[in Tons Per Day]

Non-attainment area	Point source emissions [1]	Area source emissions	On-road mobile emissions	Non-road mobile emissions	Total emissions
Ogden City	None Identified	5.60	67.80	0.89	74.29
Salt Lake City	None Identified	13.98	228.78	7.86	250.62
Utah County	145.24	27.19	353.23	4.45	530.11

[1] Major CO point sources (i.e., CO emissions equal to or greater than 100 tons per year).

All supporting calculations and documentation for these three 1990 carbon monoxide base year inventories are contained in the Technical Support Document (TSD) for this action.

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, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective August 28, 1995, unless, by July 31, 1995, adverse or critical comments are received.

If 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. 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 August 28, 1995.

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

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.

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 August 28, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2) of the CAA).

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 significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA 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 this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 187(a)(1) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the inventories being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final 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.

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.

Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

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

Dated: May 17, 1995.

Robert L. Duprey,

Acting Regional Administrator.

40 CFR part 52, subpart TT, 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)(29) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(29) Revisions to the Utah State Implementation Plan for the 1990 Carbon Monoxide Base Year emission inventories for Ogden City, Salt Lake City, and Utah County were submitted by the Governor in a letter dated July 11, 1994.

(i) Incorporation by reference.

(A) Carbon Monoxide 1990 Base Year Emission Inventories for Ogden City, Utah SIP, Section IX, Part C.3., Table IX.C.5; Salt Lake City, Utah SIP, Section IX, Part C.3., Table IX.C.4; and Utah County, Utah SIP, Section IX, Part C.6., Table IX.C.10 all of which became effective on August 31, 1994.

[FR Doc. 95–16067 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Parts 52 and 81

[KY–074–1–6948; FRL–5223–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a maintenance plan and a request to redesignate the Kentucky portion of the Ashland-Huntington nonattainment area from nonattainment to attainment for ozone (O_3) submitted on November 12, 1993, by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet). The Kentucky portion of the moderate O_3 nonattainment area includes Boyd County and a portion of Greenup County. EPA is also approving the Commonwealth of Kentucky's 1990 baseline emissions inventory because it meets EPA's requirements regarding the approval on baseline emission inventories.

EFFECTIVE DATE: June 29, 1995.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

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.

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, 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 extension 4207. Reference file KY–074–1–6948.

SUPPLEMENTARY INFORMATION: On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA) were

enacted. (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, EPA designated Boyd County of the Ashland-Huntington area as nonattainment by operation of law with respect to O_3, because the area was designated nonattainment immediately before November 15, 1990. The nonattainment area was expanded to include portions of Greenup County per section 107(d)(1)(A)(i) of the CAA (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318.) The area was classified as moderate.

The moderate nonattainment area has ambient monitoring data that show no violations of the O_3 National Ambient Air Quality Standard (NAAQS) during the period from 1991 through 1993. Therefore, on November 12, 1992, West Virginia requested to redesignate their portion of the Ashland-Huntington nonattainment area and the request was approved on December 21, 1994, by Region 3 (59 FR 65719). Also, Kentucky, on November 12, 1993, submitted for parallel processing an O_3 maintenance plan and requested redesignation of the area to attainment with respect to the O_3 NAAQS and EPA found the request complete. On May 24, 1995, the Cabinet revised the maintenance plan to address public comments, and EPA comments sent to the Cabinet in letters dated December 16, 1993, and May 5, 1994.

On February 7, 1994, Region 4 determined that the information received from the Cabinet constituted a complete redesignation request under the general completeness criteria of 40 CFR 51, appendix V, sections 2.1 and 2.2. However, for purposes of determining what requirements are applicable for redesignation purposes, EPA believes it is necessary to identify when the Cabinet first submitted a redesignation request that meets the completeness criteria. EPA noted in a previous policy memorandum that parallel processing requests for submittals under the amended CAA, including redesignation submittals, would not be determined complete. *See* ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (Act) Deadlines,'' Memorandum from John Calcagni to Air Programs Division Directors, Regions 1–10, dated October 28, 1992 (Memorandum). The rationale for this conclusion was that the parallel processing exception to the completeness criteria (40 CFR 51, appendix V, section 2.3) was not intended to extend statutory due dates for mandatory submittals. (*See* Memorandum at 3–4). However, since requests for redesignation are not mandatory submittals under the CAA, EPA changed its policy with respect to redesignation submittals to conform to the existing completeness criteria. Therefore, EPA believes the parallel processing exception to the completeness criteria may be applied to redesignation request submittals, at least until such time as the EPA decides to revise that exception (*See* 58 FR 38108 ''Approval and Promulgation of Maintenance Plan and Designation of Areas for Air Quality Planning Purposes for Carbon Monoxide, State of New York'' published July 15, 1993, and ''State Implementation Plans (SIP) Actions submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni to Air Program Directors, Region 1–10, dated October 28, 1992).

The Cabinet's redesignation request for the Kentucky portion of the Ashland/Huntington moderate O_3 nonattainment area meets the five requirements of section 107(d)(3)(E) of the CAA for redesignation to attainment. The following is a brief description of how the Commonwealth of Kentucky has fulfilled each of these requirements. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request.

1. The Area Must Have Attained the O_3 NAAQS

The Cabinet's request is based on an analysis of quality assured ambient air quality monitoring data which is relevant to the maintenance plan and to the redesignation request. The ambient air quality monitoring data for calendar years 1991 through 1993 demonstrates attainment of the standard. Kentucky has also committed to continue monitoring the moderate nonattainment area. Therefore, Kentucky has met this requirement.

2. The Area Has Met all Applicable Requirements Under Section 110 and Part D of the CAA

EPA reviewed the Kentucky SIP and in the proposal document, EPA stated that except for sections 182(b)(2) and 182(f) requirements of the CAA, the Kentucky SIP contains all measures due under the amended CAA prior to or at the time the Cabinet submitted its redesignation request. Both sections 182(b)(2) and 182(f) requirements have now been met and are detailed below. For detailed information regarding applicable requirements other than section 182(f), refer to the proposed document published December 16, 1994 (59 FR 65000).

A. Section 182(a)(1)—Emissions Inventory

Kentucky has met this requirement. This notice gives final approval of the emission inventory. For detailed information regarding this requirement, refer to the proposal document.

B. Section 182(a)(2), 182(b)(2)—Reasonably Available Control Technology (RACT)

The proposal document stated that the Ashland-Huntington area would not be redesignated until the Calgon Corporation source specific SIP revision was approved. A document approving this source specific SIP revision was published on May 24, 1995, and the SIP revision became effective on June 16, 1995. See the proposal document for more detailed information. Therefore, Kentucky has met the requirement of RACT on all major sources of VOCs for O_3 nonattainment areas designated moderate and above.

C. Section 182(a)(3)—Emissions Statements

On January 15, 1993, the Cabinet submitted a revision to the SIP to require emission statements. EPA commented on this SIP revision. In the proposal document, EPA stated that revisions were needed to the emission statement rule before EPA would approve the rule. The Cabinet submitted a second and different SIP package on December 29, 1994, which addressed EPA comments and met the federal requirements for emission statements. EPA published the approval of this second SIP revision on May 2, 1995, which became effective on July 10, 1995. For more details on the requirement of emission statements see the proposal document. Kentucky has met the emission statement requirement.

D. Section 182(b)(1)—15% Progress Plans

With the approval of this redesignation request, the requirement to submit a 15% plan is obviated because the redesignation request predated the requirement for a 15% plan. See proposal document for more detail.

E. Section 182(b)(3)—Stage II

On January 24, 1994, EPA promulgated the on board vapor recovery rule (OBVR). Section 202(a)(b) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II. Thus, the Stage II vapor recovery requirement of section 182(b)(3) is no

longer an applicable requirement. See proposal document for more detail.

F. Section 182(b)(4)—Motor Vehicle Inspection and Maintenance (I/M)

With the approval of this redesignation request, the requirement to submit a motor vehicle inspection and maintenance (I/M) rule is obviated because the redesignation request predated the requirement for a 15% plan. See proposal document for more detail.

G. Section 182(b)(5)—New Source Review (NSR)

Kentucky has met this requirement. For detailed information regarding this requirement, refer to the proposal document.

H. Section 182(f)—Oxides of Nitrogen (NOX) Requirements

This redesignation request predated the November 15, 1993, requirement for the submittal of NO_X RACT rules. However, the Cabinet has submitted a 182(f) NO_X requirements exemption. Action on the exemption request will be taken in a different document. For detailed information regarding this requirement, refer to the proposal document.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

EPA has determined that Kentucky has a fully approved O_3 SIP under section 110(k) for the moderate nonattainment area.

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Ashland-Huntington nonattainment area violated the O_3 NAAQS. Of these control measures, the reduction of fuel volatility from 10.5 psi in 1988 to 9.0 psi in 1992, as measured by the Reid Vapor Pressure (RVP), and fleet turnover due to the Federal Motor Vehicle Control Program (FMVCP) produced the most significant decreases in VOC emissions. The table below lists the actual enforceable emission reductions in tons per day (tpd) which are responsible for the recent air quality improvement in the Kentucky portion of the nonattainment area. The VOC emissions in the base year are not artificially low due to a depressed economy.

REDUCTIONS IN VOC AND NO_X EMISSIONS FROM 1990 TO 1993

VOC (tpd)	NO_X (tpd)
3.88	0.28

5. The Area Must Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

EPA is approving the Commonwealth of Kentucky's maintenance plan for the Ashland-Huntington nonattainment area because EPA finds that the Commonwealth of Kentucky's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the Commonwealth of Kentucky submitted comprehensive inventories of VOC, NO_X, and carbon monoxide (CO) emissions from the Ashland-Huntington nonattainment area. The inventory included biogenic, area, stationary, and mobile sources using 1990 as the base year for calculations to demonstrate maintenance. The 1990 inventory was projected to a 1993 attainment inventory using population growth rates. The 1993 inventory can serve as an attainment inventory because the O_3 NAAQS was not violated during the 1993 calendar year. The CO and the biogenic VOC values are included as a part of the 1990 base year emission inventory.

The Commonwealth of Kentucky submittal contains the detailed inventory data and summaries by county and source category. Finally, this inventory was prepared in accordance with EPA guidance. A summary of the base year and projected maintenance year inventories are included in this document for VOCs and NO_X. This document approves the base year inventory for the Ashland-Huntington area.

CO EMISSION INVENTORY SUMMARY FOR 1990 (TPD)

	Point	Area	Mobile	Non-road	Total
Emissions for 1990	133.03	2.41	59.90	14.42	209.76

BIOGENIC EMISSION INVENTORY (TPD) SUMMARY FOR 1990

	Biogenic
Emissions for 1990	23.60

B. Demonstration of Maintenance—Projected Inventories

As summarized in the following tables, totals for VOC, and NO_X emissions were projected from the 1990 base year, to the 1993 attainment year and out to 2005. These projected inventories were prepared in accordance with EPA guidance.

KENTUCKY PORTION OF THE ASHLAND-HUNTINGTON VOC PROJECTION INVENTORY SUMMARY (TPD)

	1990 base	1993 attain base	1996 proj	1999 proj	2002 proj	2005 proj
Point	34.81	33.79	34.12	34.10	34.10	34.10
Area	3.8	3.9	3.68	4.09	4.12	4.20
Mobile	12.43	8.60	8.55	9.40	7.95	7.86
Total	51.04	46.29	46.35	47.60	46.17	46.16

KENTUCKY PORTION OF THE ASHLAND-HUNTINGTON NO_X PROJECTION INVENTORY SUMMARY (TPD)

	1990 base	1993 attain base	1996 proj	1999 proj	2002 proj	2005 proj
Point	25.71	25.59	25.77	25.78	25.78	25.79
Area	0.18	0.18	0.18	0.18	0.18	0.17
Mobile	7.71	7.40	7.51	7.82	7.13	7.11
Total	33.60	33.17	33.46	33.78	33.09	33.08

Projections indicate that there was an emissions decrease in VOCs and NO_X in the nonattainment area from the 1993 attainment baseyear to 2005. However, the projections show a temporary increase in NO_X emissions of less than 2%. EPA believes this increase to be insignificant, and therefore, EPA believes that these emissions projections demonstrate that the nonattainment area will continue to maintain the O_3 NAAQS.

C. Verification of Continued Attainment

Continued attainment of the O_3 NAAQS in the nonattainment area depends, in part, on the Commonwealth of Kentucky's efforts toward tracking indicators of continued attainment during the maintenance period. The Cabinet will develop periodic emission inventories every three years beginning in 1996 and will evaluate these periodic inventories to see if they exceed the baseline emission inventory by more than 10%. If a 10% exceedance occurs, the state will evaluate existing control measures to see if any further emission reduction measures should be implemented.

The Commonwealth of Kentucky's contingency plan can also be triggered by an air quality exceedance. If an exceedance occurs, the Commonwealth will evaluate existing control measures to see if any further emission reduction measures should be implemented. The Commonwealth of Kentucky contingency plan *will be* triggered in the event of a monitored violation of the ozone standard. The Commonwealth then commits to adopt within six months, one or more of the contingency measures listed in the contingency plan. The Commonwealth has also committed to operate the air monitoring network in accordance to 40 CFR 58 with no reductions in the existing network.

D. Contingency Plan

The level of VOC and NO_X emissions in the nonattainment area will largely determine its ability to stay in compliance with the O_3 NAAQS in the future. Despite the Commonwealth's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, the Commonwealth of Kentucky has provided contingency measures with a schedule for implementation in the event of a future O_3 air quality problem. The plan contains the following possible contingency measures: (1) Petition EPA to opt into reformulated gasoline (RFG), (2) Inspection and maintenance (I/M), and (3) Stage II. In addition to these contingency measures, the Commonwealth has other miscellaneous options to choose included in their maintenance plan. EPA finds that the contingency measures provided in the Commonwealth of Kentucky's submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the Commonwealth of Kentucky has agreed to submit a revised maintenance SIP eight years after the nonattainment area redesignates to attainment. Such revised SIP will provide for maintenance for an additional ten years.

Final Action

This document makes final, the action which proposed approval of the maintenance plan and request to redesignate the Kentucky portion of the Ashland-Huntington nonattainment area and the baseyear inventory for the area. The document proposing approval was published on December 16, 1994 (59 FR 65000). EPA received no adverse comments on the proposed action.

EPA finds that there is good cause for this redesignation to become effective immediately upon publication because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which exempts the area from certain Clean Air Act requirements that would otherwise apply to it. The immediate effective date for this redesignation is authorized under both 5 U.S.C. § 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and § 553(d)(3), which allows an effective date less than 30 days after publication was otherwise provided by the agency for good cause found and published with the rule.''

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 August 28, 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).)

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. section 7410(a)(2) and 7410(k)(3).

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 state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

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.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Unfunded Mandates

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA 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 this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under Section 107 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final 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 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.

Dated: June 9, 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 S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(80) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(80) The maintenance plan for the Ashland-Huntington area which includes Boyd and a portion of Greenup Counties was submitted by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet on November 13 and May 24, 1995, as part of the Kentucky SIP. The 1990 Baseline Emission Inventory for the Ashland-Huntington area which includes Boyd and a portion of Greenup Counties which was submitted on November 13, 1992.

(i) Incorporation by reference.

(A) Kentucky Natural Resources and Environmental Protection Cabinet Request to Redesignate the Huntington/Ashland Moderate Ozone Nonattainment Area, Maintenance Plan, effective May 24, 1995.

(B) Appendix F Kentucky Projected Emissions Summary: VOC, CO, and NO_X, effective May 24, 1995.

(C) Table 6–1 Summary of Biogenic Emissions Huntington-Ashland MSA, effective May 24, 1995.

(ii) Other material.

(A) May 24, 1995, letter from Phillip J. Shepherd, Secretary, Natural Resources and Environmental Protection Cabinet to John H. Hankinson, Regional Administrator, USEPA Region 4.

PART 81—[AMENDED]

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

Authority: 42.U.S.C. 7401–7671q.

2. In § 81.318, the ozone table is amended by removing the ''Huntington-Ashland area'' and its entries in the first alphabetical list and the entry for ''Greenup County'' in the second alphabetical list and by adding in alphabetical order to the second listing of counties the entries for ''Boyd County'' and ''Greenup County'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	* *	* * *	*	*
Boyd County	June 29, 1995	Unclassifiable/Attainment.		
* *	* *	* * *	*	*
Greenup County	June 29, 1995	Unclassifiable/Attainment.		

KENTUCKY-OZONE—Continued

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
* *	*	* * *	*	*

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 95–15953 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5249–2]

New York: Final Authorization of State Hazardous Waste Program Revisions

AGENCY: Environmental Protection Agency.
ACTION: Immediate final rule.

SUMMARY: New York has applied for final authorization of certain revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed New York's application and has made a decision, subject to EPA's receipt and evaluation of public comment, that New York's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve New York's hazardous waste program revisions, which are described later in this Notice. New York's application for program revision is available for public review and comment.

DATES: Final authorization for New York shall be effective August 28, 1995 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on New York's program revision application must be received by the close of business July 31, 1995.

ADDRESSES: Copies of New York's program revision application are available during the business hours of 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: New York State Department of Environmental Conservation, 50 Wolf Road, Room 204, Albany, New York 12233–7253, (518) 457–3273; U.S. EPA Library (PM 211A), 401 M Street, SW., Washington, DC 20460, 202/382–5926. U.S. EPA Region II Library, 16th Floor, 290 Broadway, New York, New York 10007–1866, Phone (212) 264–2881. Written comments should be sent to: Mr. Conrad Simon, Director, Air and Waste Management Division, U.S. EPA, Region II, 290 Broadway, New York, New York 10007–1866, (212) 637–4218.

FOR FURTHER INFORMATION CONTACT: Stephen Venezia (212) 637–4218.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under § 3006(b) of the Resource Conservation and Recovery Act (RCRA or the Act), 42 U.S.C 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter HSWA) allows States to revise their programs to become equivalent to RCRA requirements promulgated under HSWA authority. Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266, 268, 124 and 270.

New York

New York initially received final authorization on May 29, 1986. New York received authorization for revisions to its program on July 3, 1989, May 7, 1990, October 29, 1991, and May 22, 1992. On December 10, 1993, New York submitted a program revision application for additional program approvals. Today, EPA is proposing approval of New York's program revision in accordance with 40 CFR 271.21(b)(3).

In order to obtain Final Authorization, the State of New York has demonstrated and certified that its authority to regulate the following is equivalent to the Federal RCRA authority, including the requirements promulgated under HSWA authority:

Provision	Federal authority	State authority
Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376; 08/14/89.	RCRA § 1006, 2002(a), 3004, 3005 and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.112, 265.113, 265.142, 270.42.	ECL § 27–0900, 0911, 0912, 0913; 6NYCRR 373–1.7(c), 373–2.2(e), 373–2.7(c), (d), 373–2.8(c), 373–3.2(d), 373–3.7(c), (d), 373–3.8(c), and Part 621.
Mining Waste Exclusion I (54 FR 36592; 09/01/89.	RCRA § 3001(b); 40 CFR 261.3 and 261.4	ECL § 27–0903; 6NYCRR 371–1.1(d) and (e).
Testing and Monitoring Activities (54 FR 40260; 09/29/89).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903, 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix.
Testing and Monitoring Activities (54 FR 40260; 09/29/89).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903; 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix.
Changes to Part 124 Not Accounted for by Present Checklists (54 FR 246; 01/04/89).	RCRA § 1006, 3005; 40 CFR 124.3, 124.5, 124.6, 124.10, 124.12.	ECL § 3–0301, 27–0703, 0913, and 70–0107; 6NYCRR 373–1.4, 373–1.6, 373–1.7, 621.2, 621.3, 621.4, 621.6, 621.7, 621.13, 621.14.
Mining Waste Exclusion II (55 FR 2322; 01/23/90).	RCRA § 3001(b)(3)–(A)(ii); 40 CFR 260.10, 261.4(b)(7).	ECL § 27–0903; 6NYCRR 370.2(b), 371.1(e)(2)(vi).
Modifications of F019 Listing (55 FR 5340; 02/14/90).	RCRA § 3001(b); 40 CFR 261.31	ECL § 27–0903; 6NYCRR 371.4(b), (c), Appendices 21 and 22.
Testing and Monitoring Activities (Technical Correction to Checklist 67).	RCRA § 3001, 3004, 3005, 3006; 40 CFR 260.11 and Part 261 Appendix III.	ECL § 27–0903, 0911 and 0913; 6NYCRR 370.1(e)(8) and Appendix 21.

Provision	Federal authority	State authority
Listing of 1,1—Dimethylhydrazine Production Wastes (55 FR 18496; 05/02/90).	RCRA §3001(b); 40 CFR 261.32	ECL §27–0903; 6NYCRR 371.4(b), (c), Appendices 21 and 22.
HSWA Codification Rule: Double Liners; Correction (Correction to Checklist 17H) (55 FR 19262; 05/09/90).	RCRA §1006, 2002(a), 3004, 3005, and 3015(b); 40 CFR 264.221, and 264.301.	ECL §3–0301, 27–0703, 0707, 0911, 0913; 6NYCRR 373–2.11(b), 373–2.14(c).

EPA has reviewed New York's application and has made an immediate final decision that New York's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to New York. The public may submit written comments on EPA's immediate final decision up until July 29, 1995. Copies of New York's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this Notice.

Approval of New York's program revision shall become effective 60 days after the date of publication of this Notice unless an adverse comment pertaining to the State's revision discussed in this Notice is received. EPA will publish either (1) a withdrawal of the immediate final decision or (2) a Notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

New York is applying for final authorization of the following Federal hazardous waste requirements:

RCRA checklist	HSWA/FR reference	Promulgation or HSWA date
Non-HSWA Cluster VI:		
Delay of Closure Period for Hazardous Waste Management Facilities	54 FR 33376	08/14/89
Mining Waste Exclusion I	54 FR 36592	09/01/89
Testing and Monitoring Activities	54 FR 40260	09/29/89
Changes to Part 124 Not Accounted for by Present Checklists	54 FR 246	01/04/89
Mining Waste Exclusion II	55 FR 2322	01/23/90
Modifications to F019 Listing	55 FR 5340	02/14/90
Testing and Monitoring Activities (Technical Correction to Checklist 67)	55 FR 8948	03/09/90
HSWA Cluster II:		
Listing of 1,1 Dimethylhydrazine Production Wastes	55 FR 18496	05/02/90
HSWA Codification Rule: Double Liners; Correction (Correction to Checklist 17H)	55 FR 19262	05/09/90

New York has only applied for authorization for the above listed requirements as part of this particular **Federal Register** approval process.

B. Decision

The EPA concludes, subject to receipt and evaluation of public comment, that New York's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA intends to grant New York final authorization to operate its hazardous waste program as revised.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of New York's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This Notice is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 15, 1995.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 95–15873 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7620]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Implementation Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase

flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Deputy Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Deputy Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective dates of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region II				
New York: Evans, town of, Erie County	360240	April 21, 1972, Emerg; September 30, 1977, Reg; July 3, 1995, Susp.	July 3, 1995	July 3, 1995.
Region III				
Pennsylvania: Orbisonia, borough of, Huntingdon County.	421682	October 15, 1975, Emerg; December 31, 1982, Reg; July 3, 1995, Susp.	.....do	Do.
Virginia: Hampton, independent city	515527	March 27, 1970, Emerg; January 15, 1971, Reg; July 3, 1995, Susp.	.....do	Do.

State and location	Community No.	Effective dates of eligibility	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Ohio: Malvern, village of, Carroll County	390052	May 14, 1975, Emerg; ..... July 3, 1995, Reg; ..... July 3, 1995, Susp.	.....do	Do.
Region X				
Oregon: Fairview, city of, Multnomah County.	410180	March 31, 1975, Emerg; ..... September 30, 1987, Reg; ..... July 3, 1995, Susp.	.....do	Do.
Region II				
New York:				
Oswego, town of Oswego County	360657	December 16, 1976, Emerg; ..... September 30, 1981, Reg; ..... July 17, 1995, Susp;.	July 17, 1995	July 17, 1995.
Richland, town of, Oswego County	360660	March 21, 1974, Emerg; ..... February 15, 1978, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Sandy Creek, town of, Oswego County	360661	August 18, 1975, Emerg; ..... October 15, 1981, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Region IV				
Georgia: Glynn County, unincorporated areas ...	130092	January 16, 1974, Emerg; ..... April 15, 1995, Reg; ..... July 17, 1995, Susp.	.....do	Do.
South Carolina:				
Cayce, city of, Lexington County	450131	February 5, 1974, Emerg; ..... May 1, 1980, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Lexington County, unincorporated areas	450129	September 6, 1974, Emerg; ..... June 15, 1981, Reg; ..... July 17, 1995, Susp.	.....do	Do.
West Columbia, city of, Lexington County ...	450140	December 6, 1973, Emerg; ..... February 15, 1979, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Region V				
Minnesota: Andover, city of, Anoka County	270689	June 23, 1976, Emerg; ..... September 30, 1980, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Ohio: Miami County, unincorporated areas	390398	April 1, 1976, Emerg; ..... January 19, 1983, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Region VI				
Texas:				
Comal County, unincorporated areas	485463	March 5, 1971, Emerg; ..... November 9, 1973, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Schertz, city of, Bexar County	480269	November 2, 1973; Emerg; ..... September 15, 1977, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Sherman, city of, Grayson County	485509	May 22, 1970, Emerg; ..... June 4, 1971, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Region VII				
Missouri: Hayti Heights, city of, Pemiscot County.	290277	March 20, 1975, Emerg; ..... June 15, 1981, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Nebraska: Blair, city of, Washington County	310228	September 17, 1974, Emerg; ..... July 16, 1981, Reg; ..... July 17, 1995, Susp.	.....do	Do.
Region X				
Idaho: Coeur d'Alene, city of, Kootenai County ..	160078	June 25, 1975, Emerg; ..... September 2, 1982, Reg; ..... July 17, 1995, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: June 23, 1995.

Frank H. Thomas,

Deputy Associate Director, Mitigation Directorate.

[FR Doc. 95–15976 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 950615156–5156–01; I.D. 050295A]

RIN 0648–AI02

Atlantic Sea Scallop Fishery; Framework 5 Gear Restrictions

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 5 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP). This rule implements measures that prohibit limited access vessels, fishing under the days-at-sea (DAS) program, from using trawl nets, with the exception of vessels that have not used a scallop dredge since January 1, 1988, to the present, and requires all dredges to have a minimum number of rows of steel rings extending from the ''after end'' to the club stick. The intent is to protect against the overharvest of small, immature sea scallops.

EFFECTIVE DATE: July 31, 1995.

ADDRESSES: Copies of Amendment 4, its regulatory impact review, initial regulatory flexibility analysis (IRFA), the final supplemental environmental impact statement, and the supporting documents for Framework Adjustment 5 are available from Douglas Marshall, Executive Director, New England Fishery Management Council, Suntaug Office Park, 5 Broadway (U.S. Route 1), Saugus, MA 01906–1097, telephone 617–231–0422.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was implemented on March 1, 1994 (59 FR 2757, January 19, 1994). The amendment established controls on total fishing effort through limited entry and a schedule of reductions in allowable time at sea. Although the amendment was approved, NMFS remains concerned about the near-term level of protection of small sea scallops. This concern is reflected in the Director's, Northeast Region, NMFS (Regional Director), approval letter to the New England Fishery Management Council (Council), dated November 5, 1993, that advised the Council that the Regional Director will be monitoring carefully the initial impact of the amendment on fishing mortality rates of small sea scallops. If fishing mortality rates increased beyond anticipated levels, the Council was expected to consider immediately, adjustments for implementation under the framework measure provisions of the amendment.

Ban on Trawl Nets

The final rule prohibits limited access vessels fishing under the DAS program from using trawl nets except for vessels that have not used a scallop dredge since January 1, 1988. The intended effect of this prohibition is to prevent current scallop dredge vessels from switching to trawl nets, a switch that would likely result in a significant increase in the harvest of small scallops in contravention of Amendment 4 objectives. Many of the current dredge operators have commented that the replacement of dredges with trawl nets, in the sea scallop fishery, may result in the further depletion of the resource. The Council's Scallop Plan Development Team supports this concern in its finding that the use of trawl nets tends to circumvent the limits on fishing gear selectivity intended by the regulatory 3¼ (83 mm) and 3½ inch (89 mm) minimum ring size restrictions for dredges. Furthermore, at least one study has shown that trawl nets are not as selective as dredges in regard to the harvest of smaller scallops and that larger numbers of smaller scallops are killed during landing, while on deck, or during or after discarding in the trawl fishery than in the dredge fishery.

For purposes of allowing traditional fishing practices to continue, as analyzed in connection with Amendment 4, Framework Adjustment 5 allows vessels that have not used a scallop dredge since January 1, 1988, to fish for scallops using trawl nets. This exemption will apply only to vessels for which an eligibility determination has been made in 1995. This criterion is intended to allow only those vessels that are incapable of towing dredges due to their lack of sufficient engine power and/or proper construction to participate in the trawl net segment of the fishery. The number of such vessels is projected to be small and, therefore, allowing such vessels to continue to fish with trawl nets is anticipated not to have any significant impact on the stock.

Restrictions on Dredge Configuration

Amendment 4 prohibits the use of any material, device, or net or dredge configuration or design that results in obstructing the release of scallops that would have passed through a legal size net and dredge that did not use any such material, device, or net or dredge configuration or design. The Council is aware of a recent practice of running the twine top along the back of the dredge to the club stick. This practice limits the ability of the dredge to open up as the mesh stretches shut, thereby restricting the escapement of smaller scallops. Framework Adjustment 5 specifies the acceptable twine top configuration for dredges in use by limited access vessels under the DAS program. Specifically, the framework adjustment refines the dredge vessel gear restrictions to require that all dredges that are wider than 8 ft (2.44 m) and all dredges used on double-rigged vessels have at least seven rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick. Additionally, all single dredges of 8 ft (2.44 m) or less width must have at least four rows (regardless of ring size) of nonoverlapping steel rings between the after end of the twine top and the club stick.

Public Comment

The December 8, 1994, Council meeting was the first of the required public meetings under the framework adjustment process as announced in the **Federal Register** on December 2, 1994 (59 FR 61878). A draft document containing the proposed management measures and their rationale was available to the public on December 28, 1994, and mailed to 260 people, including those serving as scallop industry advisors to the Council. Two subsequent public hearings were held jointly with Council meetings occurring on January 12, 1995, and March 30, 1995. Five written sets of comments were received by the Council. Four commenters favored the framework, while one was opposed to an exemption for traditional net vessels.

Testimony provided by industry members and other interested parties mirrored the concern of the Council regarding net trawls, dredge configuration, and the taking of small

scallops. Traditional net fishers, especially those from the Mid-Atlantic area, voiced concern regarding a prohibition on trawl nets. However, all agreed that an exemption for traditional net vessels from the ban on nets, would address concerns of net fishermen, while providing adequate protection to the resource.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds there is good cause to waive prior notice and opportunity for comments under 5 U.S.C. 553(b)(B). Three Council meetings held by the Council to discuss management measures implemented by this rule provided adequate prior notice opportunity for public comment to be made and considered. Thus additional opportunity for public comment is unnecessary. Because prior notice and an opportunity for comment is not required for this rule, no regulatory flexibility analysis is required or was prepared.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 650

Fisheries, Reporting and recordkeeping requirements.

Dated: June 23, 1995.

Richard H. Schaefer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 650 is amended as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

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

2. Section 650.9 is amended by revising paragraphs (a)(5) and (d)(13) and adding paragraphs (b)(25) and (b)(26) to read as follows:

§ 650.9 Prohibitions.

* * * * *

(a) * * *

(5) Make any false statement in connection with an application or declaration under § 650.4, § 650.5 or § 650.21.

(b) * * *

(25) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program unless exempted as provided for in § 650.21(f).

(26) Fail to comply with the restriction on twine top described in § 650.21(b)(4)(iv).

* * * * *

(d) * * *

(13) Make any false statement on any report or declaration under § 650.7 or under § 650.21.

3. Section 650.21 is amended by revising paragraph (a) introductory text and adding paragraphs (b)(4)(iv) and (f) to read as follows:

§ 650.21 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels in possession of more than 40 lb (18.14 kg) of shucked scallops or 5 U.S. bushels (176.2 l) of in-shell scallops, trawl vessels fishing for scallops, and trawl vessels issued a limited access scallop permit under § 650.4(a), while fishing under or subject to the DAS allocation program for sea scallops and authorized to fish with or possess on board trawl nets pursuant to § 650.21(f), must comply with the following:

* * * * *

(b) * * *

(4) * * *

(iv) *Twine top restrictions.* Vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions: For dredges greater than 8 ft (2.44 m) in width or for dredges on a vessel rigged with more than one dredge, regardless of size, at least seven rows of nonoverlapping steel rings unobstructed by netting or any other material, must be between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top). For dredges less than 8 ft (2.44 m) in width, used singly, at least four rows of nonoverlapping steel rings unobstructed by netting or any other material must be between the club stick and the twine top of the dredge (Figure 2).

* * * * *

(f) *Restriction on the use of trawl nets.* (1) Beginning on August 28, 1995 vessels issued a limited access scallop permit fishing for scallops under the DAS allocation program may not fish with, possess on board, or land scallops while in possession of trawl nets unless such vessels have been determined to be eligible to use trawl nets and have on board a valid letter of authorization as specified and provided for under paragraphs (f)(2) and (3) of this section.

(2) *Determination of eligibility to use trawl nets.* To be eligible for an exemption from the restriction described in paragraph (f) of this section, a vessel may not have fished for scallops with a scallop dredge from January 1, 1988, to the present. NMFS will contact all limited access permit holders to notify them of their initial determination of eligibility for an exemption from the prohibition on the use of trawl nets based on information currently available to NMFS. If a vessel owner agrees with an initial determination that the vessel is eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. If the vessel owner disagrees with an initial determination that the vessel is not eligible to use a trawl net, the owner must, within 30 days of receipt of the initial determination, sign and submit to NMFS a declaration, provided by NMFS, stating that the vessel has not fished for scallops with a scallop dredge from January 1, 1988, to the present. The signed declaration shall serve as a rebuttable presumption that the vessel qualifies for an exemption from the prohibition on the use of trawl nets. This exemption applies only to vessels that have been issued 1995 limited access scallop permits or that are eligible to be issued such a permit, and for which a determination has been made in 1995, except as provided in paragraph (f)(4) of this section.

(3) *Authorization to use trawl nets.* Vessels determined to have met the criteria for exemption from the prohibition on the use of trawl nets, pursuant to paragraph (f)(2) of this section, shall be issued a letter of authorization by the Regional Director. Such letter must be carried on board the vessel at all times. In subsequent years, eligibility for this exemption will be indicated on the vessel's permit.

(4) *Authorization to use trawl nets by replacement vessels.* To be eligible for an exemption from the restriction described in paragraph (f) of this section, any replacement vessel of a vessel authorized to fish for scallops with trawl nets must meet the eligibility requirements and have on board a valid letter of authorization as specified and provided under paragraphs (f)(2) and (f)(3) of this section. The letter of authorization must be requested at the time the vessel owner initially applies for a permit for the replacement vessel. The determination of a replacement vessel's eligibility for a letter of authorization shall be made in accordance with, and as specified in paragraph (f)(2) of this section.

* * * * *

4. Figure 2 to part 650 is added to part 650 to read as follows:

BILLING CODE 3510–22–F

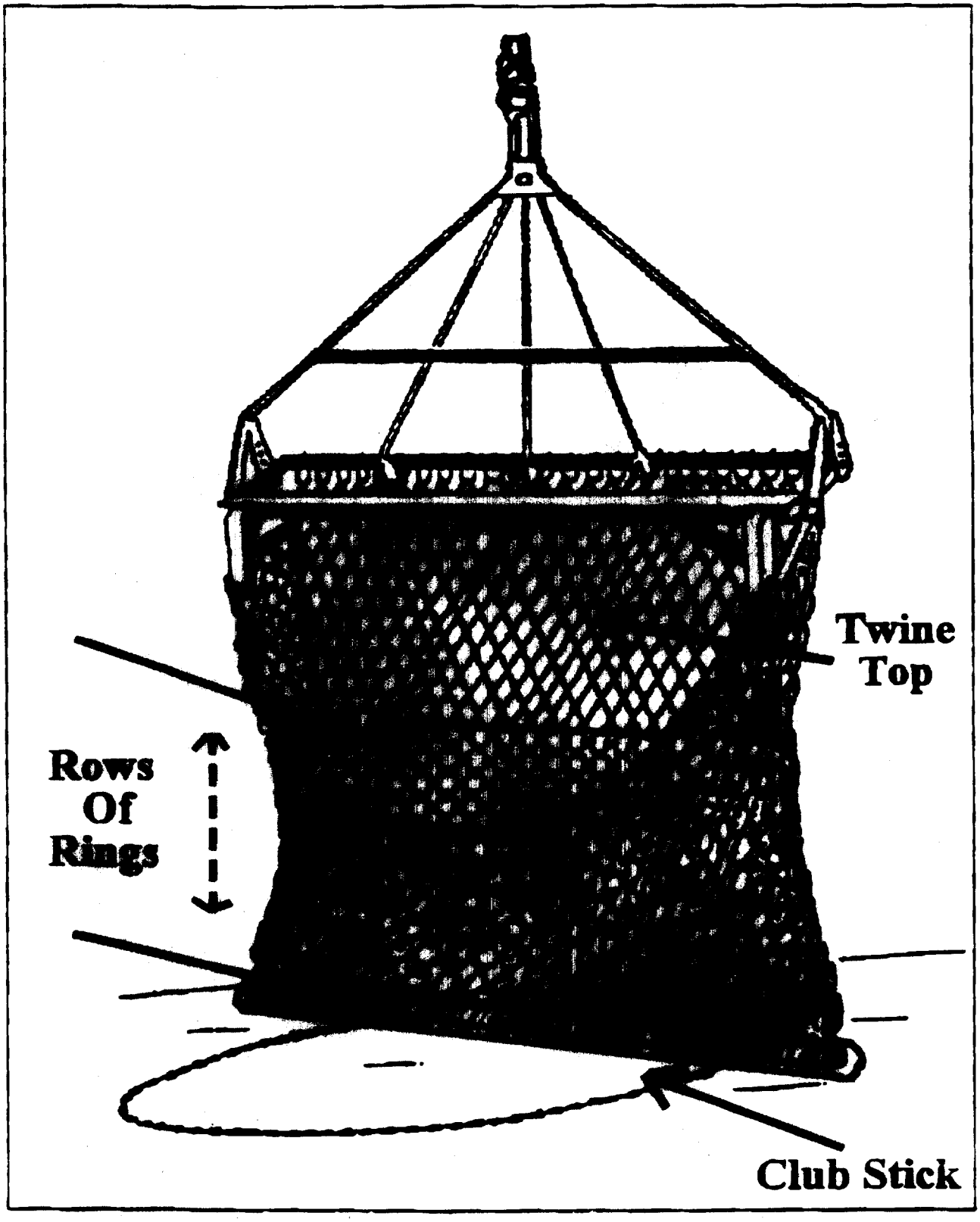

Figure 2 to Part 650—Schematic example of a legal dredge with twine top. Not Drawn to scale

[FR Doc. 95–16007 Filed 6–28–95; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 60, No. 125
Thursday, June 29, 1995

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. AO–99–A–6; FV–92–065]

Winter Pears Grown in Oregon, Washington, and California; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the subject marketing agreement and order (order) and provides winter pear producers with the opportunity to vote in a referendum to determine if they favor the proposed amendments. The proposed amendments were submitted by the Winter Pear Control Committee (WPCC), the agency responsible for local administration of the order. The proposed amendments would redefine ''ship or handle'' to include shipments of winter pears within the production area, update the definition of ''export market'' to recognize that there are now 50 states in the United States, authorize the WPCC to accept voluntary contributions and how such funds may be used, and revise the authority for exempting certain shipments from regulation. These proposed amendments are designed to improve the administration, operation and function of the winter pear marketing order program.

DATES: The referendum shall be conducted from November 1 through November 30, 1995.

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, Washington, DC 20250–0200; telephone: (202) 720–5127; or Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW., Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 16, 1992, and published in the November 20, 1992, issue of the **Federal Register** (57 FR 54728). Recommended Decision and Opportunity To File Written Exceptions issued on March 15, 1995, and published in the **Federal Register** on March 21, 1995 (60 FR 14914).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements to Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated on the record of a public hearing held in Portland, Oregon, on December 2, 1992, to consider the proposed amendment of the Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon, Washington, and California hereinafter referred to collectively as the ''order.'' The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the WPCC established under the order to assist in local administration of the program.

The proposals would: (1) Redefine ''ship or handle'' to include shipments of winter pears within the production area; (2) update the definition of ''export market'' to recognize that there are now 50 states in the United States; (3) authorize the WPCC to accept voluntary contributions and how such funds may be used; and (4) revise the authority for exempting certain shipments from regulation.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on March 21, 1995, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 20, 1995. None were filed.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural service firms, which include handlers regulated under this order, have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000. Small agricultural producers are defined as those having annual receipts of less than $500,000.

The purpose of the RFA is to fit regulatory actions to the scales of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1991–92 crop year, 90 handlers were regulated under Marketing Order No. 927. In addition, there were about 1,650 producers of winter pears in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

All of the amendments are designed to enhance the administration and functioning of the marketing agreement and order which would benefit the industry. If implemented, these amendments might impose some costs on affected handlers and producers. However, the added burden on small entities, if present at all, would not be significant because the benefits of the proposed amendments are expected to outweigh the costs.

The amendments proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the 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 his or her 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.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), any change in the reporting and recordkeeping provisions that may result from the proposed amendments would be submitted to the Office of Management and Budget (OMB). The provisions would not be effective until receiving OMB approval.

Findings and Conclusions and Rulings on Exceptions

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the March 21, 1995, issue of the **Federal Register** (60 FR 14914) are hereby approved and adopted without change.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled ''Order Amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California.'' This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of winter pears grown in Oregon, Washington, and California is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of winter pears grown in Oregon, Washington, and California.

The representative period for the conduct of such referendum is hereby determined to be July 1, 1994, through June 30, 1995.

The agents of the Secretary to conduct such referendum are hereby designated to be Teresa L. Hutchinson, Marketing Specialist, and Gary D. Olson, Officer-in-Charge, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204, telephone: 503–326–2725.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

Dated: June 22, 1995.

David R. Shipman,

Acting Deputy Assistant Secretary, Marketing and Regulatory Programs.

Order amending the Order Regulating the Handling of Winter Pears Grown in Oregon, Washington, and California [1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings and Determinations Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon, Washington, and California.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, as hereby proposed to be further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes or commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The marketing agreement and order, as amended, as hereby proposed to be further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon, Washington, and California, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on March 15, 1995, and published in the **Federal Register** on March 21, 1995, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 927.8 is revised to read as follows:

§ 927.8 Ship or handle.

Ship or *handle* means to sell, deliver, consign or transport pears, within the production area or between the production area and any point outside thereof: Provided, That the term ''handle'' shall not include the transportation of winter pear shipments within the production area from the orchard where grown to a packing facility located within the production area for preparation for market.

3. Section 927.10 is revised to read as follows:

§ 927.10 Production area.

Production area means and includes the States of Oregon, Washington, and California.

4. Section 927.12 is revised to read as follows:

§ 927.12 Export market.

Export market means any destination which is not within the 50 states, or the District of Columbia, of the United States.

5. In § 927.41, paragraph (a) is revised to read as follows:

§ 927.41 Assessments.

(a) Assessments will be levied only upon handlers who first handle pears. Each handler shall pay assessments on all pears handled by such handler as the pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the Control Committee during a fiscal period. The payment of assessments for the maintenance and functioning of the Control Committee may be required under this part throughout the period such assessments are payable irrespective of whether particular provisions thereof are suspended or become inoperative.

* * * * *

6. Section 927.45 is added to read as follows:

§ 927.45 Contributions.

The Control Committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 927.47. Furthermore, such contributions shall be free from any encumbrances by the donor and the Control Committee shall retain complete control of their use.

7. Section 927.47 is revised to read as follows:

§ 927.47 Research and development.

The Control Committee, with the approval of the Secretary, may establish or provide for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. Such projects may provide for any form of marketing promotion, including paid advertising. The expense of such projects shall be paid from funds collected pursuant to §§ 927.41 and 927.45. Expenditures for a particular variety of pears shall approximate the amount of assessments and voluntary contributions collected for that variety of pears.

8. In § 927.52, paragraph (b)(1) is revised to read as follows:

§ 927.52 Prerequisites to Control Committee recommendations.

* * * * *

(b) * * *

(1) The basis of one vote for each 25,000 boxes (except 2,500 boxes for Forelle and Seckel varieties) of the average quantity of such variety produced in the particular district and shipped therefrom during the immediately preceding three fiscal periods; or

* * * * *

9. In § 927.65, paragraph (b) is revised to read as follows:

§ 927.65 Exemption from regulation.

* * * * *

(b) The Control Committee may prescribe rules and regulations, to become effective upon the approval of the Secretary, whereby quantities of pears or types of pear shipments may be exempted from any or all provisions of this subpart.

* * * * *

[FR Doc. 95–15947 Filed 6–28–95; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R–0772]

RIN 7100–AB28

Securities Credit Transactions; Review of Regulation T, ''Credit by Brokers and Dealers''

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: As part of a program to periodically review its regulations, the Board is proposing amendments to Regulation T, the regulation that covers extensions of credit by and to broker and dealers (also known as creditors). These amendments reflect consideration of the comments submitted in response to the Board's Advance Notice of Proposed Rulemaking. Many of the proposed amendments feature increased reliance on rules of the Securities and Exchange Commission (SEC) and self-regulatory organizations (SROs) and others would make Regulation T consistent with Regulation G and Regulation U, the regulations covering securities credit by lenders other than broker-dealers. Proposed changes in the options area include permitting loan value for long positions in exchange-traded options and increasing reliance on the margin rules of the exchange that trades the option for customer and specialist transactions. These changes would also allow creditors to recognize the offsetting nature of financial futures in calculating margin for securities options. Proposed amendments in the international area will reduce restrictions on transactions involving foreign securities that are not publicly traded in the United States and foreign securities being sold on an installment basis if the U.S. component is a relatively small percentage of the offering. Broker-dealers would also be given more flexibility in computing overall margin requirements for customer accounts with securities denominated in one or more foreign currencies. In addition to these and other amendments, technical changes are being proposed to clarify areas that have raised questions, update references, or restore language inadvertently deleted. The Board is also soliciting comments on a number of specific proposals. Finally, a number of questions regarding the existing regulation raised by commenters are being answered.

DATES: Comments should be received on or before August 28, 1995.

ADDRESSES: Comments should refer to Docket No. R–0772, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B–222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments received will be available for

inspection in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Scott Holz, Senior Attorney, or Angela Desmond, Senior Counsel, Division of Banking Supervision and Regulation (202) 452–2781; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: In 1992, the Board issued an advance notice of proposed rulemaking and request for comment concerning a general review of Regulation T.[1] Comments were received from 31 respondents, some of whom commented more than once. The comments have been analyzed to help prepare proposed amendments to the regulation. These proposed amendments are consistent with the current tenor of the regulation and statutory requirements; however, the comments raised broad issues as to purposes that Regulation T serves in light of the current regulatory environment and market practices. One comment questioned the continuing need for the Regulation T requirements, noting that possible purposes for the regulation, such as broker dealer financial integrity and customer protection, also are addressed by SEC oversight of brokers and dealers by means of net capital and customer protection rules. Comments also suggested broad changes to Regulation T that the commenters believe are appropriate in the current environment. These changes included, but were not limited to: (1) Delegating all responsibility for margins and related requirements to the self-regulatory organizations under the oversight of the SEC; (2) applying the restrictions on arranging credit only to credit that otherwise violates margin rules; (3) eliminating margin requirements on loans to brokers and dealers; (4) exempting from the margin rules transactions in all exempt securities; (5) exempting transactions with sophisticated customers; (6) expansion of permissible arrangements for borrowing and lending securities; and (7) exempting transactions in investment grade securities. While the Board believes that it is important to proceed with the proposed amendments in order to address particular problems, the Board also believes regulatory structures should be reviewed continually, not merely to update them, but also to assess whether different structures would better meet regulatory objectives and even whether regulation is still necessary. Accordingly, the Board requests comments including particular proposals and supporting legal and policy rationale, not only on the specific changes to Regulation T set forth in this notice, but also on the proposals enumerated above, the continuing need for Regulation T, and appropriate changes to its scope and architecture. The supplementary information that follows explains what is being proposed and reasons therefor.

I. Options

A. Exchange-Traded Options

1. Loan Value for Long Options

All securities listed on a national securities exchange have loan value under Regulation T except for options. The Board proposes to eliminate this disparate treatment, which was adopted in the early 1970s, and allow exchange-traded options the same 50 percent loan value currently afforded other margin equity securities. In light of the successful growth of standardized options trading since the 1970s, the positive performance of the Options Clearing Corporation, and the development of new types of options, other securities and financial futures, the Board is proposing to treat long positions in exchange-traded options the same as other registered equity securities for margin purposes.

Granting 50 percent loan value to exchange-traded options would also address a disparity that has arisen in the past few years with the listing of so-called index warrants. Although index warrants resemble long-term options, the use of the word ''warrant'' to describe this product has led many broker-dealers to allow 50 percent loan value for these instruments while long-term options, such as LEAPs, are not permitted any loan value under the current regulation. Treating exchange-traded options the same as other exchange-traded equity securities would eliminate this disparity.

2. Increased Reliance on SRO Rules

When Regulation T was adopted in 1934, the amount of margin required for writing a put or call was the amount ''customarily required'' by the creditor. In the 1970s the Board adopted specific requirements based on existing rules of one of the self-regulatory organizations (SROs). Starting in the 1980s, the Board has on more than one occasion amended Regulation T to incorporate by reference SRO margin rules for options transactions. The Board is proposing to continue this process by increasing reliance on SRO options margin rules for customers and specialists.

a. Margin account. The margin account currently specifies positions which may serve in lieu of the margin required for writing an option on an equity security, while incorporating the rules of the SROs for options written on anything other than an equity security (such as a securities index). The Board proposes to allow SRO rules, which must be approved by the SEC, to prescribe appropriate cover for all short options positions.

Many commenters expressed support for a risk-based options margin system and/or a recognition of the offsetting nature of financial futures based on similar indexes, rates, or assets. Under the Board's proposal, the SROs would be able to further these goals in setting cover requirements for all types of securities options.

b. Cash account. Although the writing of an option creates a short position which is normally carried in the margin account, the cash account section was amended in the early 1980s to allow certain covered options transactions to be effected in this account. Board staff has since indicated that the cash account can be used for additional options transactions. These transactions are not ''covered'' in the sense that the account holds the underlying security. However, the transactions involve a quantifiably limited risk and the cash account in which the transaction is effected contains specified assets of sufficient value to cover this amount or an escrow receipt representing such assets.[2] The Board proposes to adopt generic language under which a ''covered option transaction'' would be eligible for the cash account under specified conditions. The Board is also adding money market mutual funds to the list of cash equivalents that may be used to cover a put written in the cash account.

c. Market functions account. Regulation T permits the extension of credit on a good faith basis to a specialist for transactions in its specialty security. In addition, options specialists can obtain good faith financing for the underlying security and other specialists can obtain good faith credit for options overlying their specialty securities. These positions are known as ''permitted offsets.'' The regulation specifies which positions must be held in the account to allow permitted offsets and does not provide for offsets in the case of specialists in

[1] 57 FR 37109, August 18, 1992.

[2] See, e.g., Staff Opinion of July 12, 1991, Federal Reserve Regulatory Service (*FRRS*) 5–666.251 and Staff Opinion of October 11, 1991, *FRRS* 5–666.26.

index options. The Board proposes to adopt generic language permitting the extension of good faith credit for permitted offsets, provided the position has been designated as a permitted offset under SEC-approved rules of the appropriate SRO.

B. OTC Options

In 1991, Board staff raised no objection to a broker-dealer that sought to ''arrange'' for its customer to write an OTC option on foreign securities.[3] This position would be codified by the proposed amendments to the arranging section concerning foreign securities. The Board is not proposing to extend this position to OTC options on securities which are publicly traded in the United States. Allowing broker-dealers to arrange for customers to write OTC options without collecting margin would not be consistent with the requirements of the organized options exchanges. Rules of the New York Stock Exchange (NYSE) and the National Association of Securities Dealers (NASD) both provide that margin is required for the ''issuance, guarantee or sale (other than a 'long' sale) for a customer of a put or call.'' The Board is proposing to add the word ''sell'' to the language in the cash account to make clear that the Board's rules cover the same situations covered by NYSE and NASD rules.

C. Employee Stock Options and Other Benefit Plans

Section 220.3(e)(4) of Regulation T was added in 1988 to allow creditors to help customers with valuable employee stock options exercise their options by providing short-term financing of the exercise price. The short-term loan is either paid off from the sale of the securities received pursuant to the employee stock option or replaced with a conventional margin loan extended against those securities. This practice has come to be known in the industry as ''cashless exercise.'' Over the last five years, Board staff has not objected to the expansion of the application of § 220.3(e)(4) to other types of securities customers receive under employee benefit plans, such as certain employee stock warrants. In addition, Board staff has allowed brokers to temporarily finance withholding taxes due on stock received under employee benefit plans. New language is being proposed to reflect these staff opinions. The new language would also allow the use of § 220.3(e)(4) for outside directors and consultants who are eligible to participate in employee benefit plans under SEC rules.

II. International Transactions

A. Foreign Broker-Dealers

Any entity required to register as a broker or dealer with the SEC under section 15(a) of the Securities Exchange Act of 1934 (the Act) is a creditor under Regulation T. Although the definitions of ''broker'' and ''dealer'' in the Act do not refer to nationality, the SEC's policy is to require registration of foreign broker-dealers only when they are physically operating in the United States.[4] The Board generally follows the SEC in this area and does not consider foreign broker-dealers not required to register with the SEC as creditors under Regulation T.

Although the commenters were mixed on whether the definition of creditor should be amended to include or exclude foreign broker-dealers, there was general agreement that U.S. broker-dealers purchasing securities from or selling securities to a foreign broker-dealer on a DVP basis should be able to effect the trades on a broker-to-broker basis. Proposed language is being added to the Broker-Dealer Credit Account that will make clear that foreign broker-dealers may use this account for DVP transactions with U.S. broker-dealers.

B. Foreign Currency

Since 1990, creditors have been able to extend margin credit denominated in foreign currency if it is secured by foreign margin securities denominated or traded in the same foreign currency. If a customer has securities of various denominations, margin subaccounts (and, if desired, SMA subaccounts) are set up so that credit computed in U.S. dollars and each separate currency can be isolated. Under the current rule, an increase in the value of securities used to support specific foreign currency-denominated debt cannot be used to offset a deficiency in another margin subaccount. At the request of commenters, the Board is proposing to delete this limitation and permit margin requirements denominated in any currency to be offset by equity in any marginable security or a foreign currency deposit made in connection with a security denominated in that currency. Creditors would be free to retain the current system of separate SMAs for each foreign currency denomination.

Another comment concerning foreign currency comes from the Securities Industry Association (SIA), which believes that any freely convertible currency should be able to be treated at its U.S. dollar equivalent for all purposes of Regulation T. Under the current version of Regulation T, foreign currency received in connection with the purchase, sale or loan of a security denominated in that currency may be accounted for in that currency or at its U.S. dollar equivalent. If there is no security denominated in that currency, creditors should convert the currency into its U.S. dollar equivalent upon receipt. The conversion can be effected in a customer's cash or margin account, with the resulting balance maintained in U.S. dollars.

C. Foreign Securities

1. Arranging

In 1990, the Board added an exception concerning foreign stocks to the arranging section of Regulation T which permits a creditor to arrange for its customer to receive more credit than the creditor could extend when its customer is purchasing a foreign security with credit from a foreign lender. The exception, found in section 220.13(d), was based on the theory that transactions involving foreign securities do not require the same strictness of regulation because they do not have a substantial effect on the U.S. securities market. Commenters have asked for the Board to expand the foreign stock exception to cover short sales as well. The Board agrees that equal treatment in the arranging area should be afforded to both long and short sales.

In gaining experience with the 1990 amendment, however, it has been noticed that there is an increasing trend for corporations that have issued stock abroad to list the securities for trading in the United States. Therefore, the Board is proposing a somewhat more restricted definition of what constitutes a foreign security for purposes of this section to assure equal treatment of foreign and domestic securities that are publicly traded in the United States. For example, the German conglomerate Daimler-Benz recently listed its shares on the New York Stock Exchange, thereby enabling U.S. broker-dealers to extend 50 percent credit against the stock. Under the current arranging exception for foreign securities, a creditor can arrange for its customer to borrow more than 50 percent on Daimler-Benz stock if the credit is extended by a foreign lender (often a foreign affiliate of the creditor). In contrast, a creditor may not arrange for its customer to buy AT&T stock with less than 50 percent margin, even if the credit were extended by a foreign

[3] Staff Opinion of October 22, 1991, *FRRS* 5–666.27.

[4] SEC Release No. 34–27017; 54 FR 30013 (July 18, 1989).

lender. Proposed language would address this situation and ensure equal treatment for all stocks that are publicly traded in the United States by permitting a creditor to arrange for the purchase or short sale of a ''non-U.S. traded foreign security,'' defined as a security issued abroad that does not trade on a national securities exchange or NASDAQ.

2. Lending Foreign Securities

Under Regulation T, a creditor may borrow or lend securities for the purpose of making delivery pursuant to a short sale or ''fail'' transaction. In addition, the regulation limits the type of collateral that must be pledged to secure a loan of securities. Several commenters, such as the SIA and the SIA–Credit Division, request an amendment to permit U.S. broker-dealers to lend foreign securities to a foreign person for any purpose that is lawful in the foreign country. The NYSE would like to ensure that foreign securities loaned abroad do not come back to the U.S. to cover short sales or fails. The Board is therefore proposing to allow loans of foreign securities for any lawful purpose if the securities are ''non-U.S. traded foreign securities.'' This should prevent these securities from being used for transactions in the United States. In addition, the SIA notes that many securities lending transactions occurring outside the U.S. would not meet the collateral requirements of Regulation T. The proposed amendment would allow a creditor to accept any collateral that may be pledged in the foreign country for loans of securities, providing the collateral's value is at least equal to 100 percent of the market value of the securities borrowed.

3. Installment Sales

The United Kingdom began a series of privatizations of state-owned companies in the late 1970s. Investors in the shares of these companies paid for them on an installment basis over a period of at least six months. Installment sales are not uncommon in the U.K., but are generally prohibited in this country under section 11(d) of the Act.[5] The practice is also prohibited under Regulation T if the first installment is less than the initial margin requirement.

Participation of U.S. investors in the U.K. privatizations was accommodated by letters written by Board staff.[6] The Board proposes to amend the arranging provision of Regulation T to state that a creditor is not deemed to have arranged for credit subject to the margin regulations if it sells a foreign security that is being offered on an installment basis, provided that less than 15 percent of the issue is offered to U.S. persons. This generic language would allow U.S. investors to participate in installment sales of foreign securities when the U.S. component of the offering is a relatively small portion of the overall offering and would cover offerings by foreign governments and other foreign issuers.

4. Foreign Margin Stocks

In 1990, the Board amended Regulation T to establish a List of Foreign Margin Stocks (the ''Foreign List''). These stocks are treated in the same manner as domestic margin equity securities. The Board established criteria for initial inclusion on the Foreign List and for continued listing. U.S. broker-dealers certify to an SRO that specific foreign securities meet the criteria. The Board uses the information submitted by the SRO in publishing the Foreign List. The Foreign List has grown from approximately 40 stocks in August 1990 to over 700 stocks this year.

Many commenters state that the system is cumbersome and results in all broker-dealers benefitting from the research done by a small number of firms. Some commenters have suggested that a stock included in a major foreign stock index should be automatically marginable if it meets two criteria: (1) the SEC or CFTC has approved trading in the United States of options, warrants, or futures on a foreign securities index that contains the foreign equity security and (2) the SEC has determined that the stock has a ''ready market'' for purposes of its net capital rule.[7] The Board is soliciting comment whether such a test should be adopted, which securities would be covered under the criteria, and suggestions on how this information could be integrated into the Board's Foreign List.

III. Other Customer Transactions

A. Margin Account/SMA

Most customer transactions involving credit take place in a margin account, which may be maintained in conjunction with a special memorandum account (SMA). Several commenters recommend that more than one customer, such as members of a family, be permitted to share a single SMA. One broker-dealer notes that this would allow the individual customers' accounts to be cross-collateralized and cross-guaranteed. The Board is not proposing to change the SMA at this time. In addition to operational problems raised by linked SMAs, Regulation T and the Board's other margin regulations do not allow a guarantee to have loan value for securities credit transactions.

The SIA-Credit Division suggests elimination of the provision in § 220.4(f)(2)(ii) concerning withdrawals of securities received as part of a distribution attributed to securities already in the margin account. This section is permissive in that it permits some withdrawals which create or increase a margin deficiency. Nevertheless, the Board is soliciting comment on whether such an exception is still warranted.

1. Convertible Bonds

Under Regulations G and U (12 CFR Parts 207 and 221), a debt security convertible into a margin stock is considered a margin stock. Although no comparable rule exists in Regulation T, in 1990 the Board defined foreign margin stock to include a debt security convertible into a margin security. The SIA-Credit Division and several broker-dealers recommend applying this concept to all convertible debt securities in Regulation T and the Board is proposing language to accomplish this.

2. Mutual Funds

a. Exempted securities mutual funds. Since 1968, the definition of margin stock in Regulations G and U has excluded mutual fund shares of companies whose assets are at least 95 percent invested in exempted securities. The exclusion of these funds (exempted securities mutual funds) from the definition of margin stock is equivalent to giving them good faith loan value at lenders other than broker-dealers. The Investment Company Institute has asked the Board to amend Regulation T so that exempted securities mutual funds will be entitled to good faith loan value at broker-dealers as well as other lenders. The Board is proposing to use the regulatory language found in Regulations G and U in Regulation T.

b. Money market mutual funds. In addition to exempted securities mutual funds, the Board is proposing to give good faith loan value to money market mutual funds. Money market mutual funds are subject to additional SEC regulation and are recognized as cash equivalents by the industry and the general public.

3. OTC Margin Bonds

Several commenters suggest that the Board adopt a rating requirement for all

[5] 15 U.S.C. 78k(d).

[6] See, e.g., Staff Opinion of October 24, 1984, *FRRS* 5–615.92.

[7] 17 CFR 240.15c3–1(c)(11).

debt securities as an alternative to the current requirement that domestic debt securities be registered with the SEC. The Board has adopted the rating requirement for foreign securities because the concept of comity argues against requiring SEC registration. The fact that ''mortgage-related securities'' require a rating but not SEC registration was Congressionally mandated in the Secondary Mortgage Market Enhancement Act of 1984.

The Board is proposing to strike the word ''mortgage'' from the second section of the definition of ''OTC margin bond'' to clarify that all pass-through securities can meet this definition. The Board also confirms that the minimum principal amount required for ''OTC margin bonds'' applies to shelf registrations of a single issue once the minimum amount has been issued, even though some of the individual tranches sold may be smaller.

Although a 1984 staff opinion took the position that privately-issued Treasury receipts were not exempted securities and not entitled to loan value,[8] the Board, SEC and Treasury Department have become more comfortable over time with viewing these securities as equivalent to exempt securities. For example, a 1994 Board staff opinion concerning the Glass-Steagall Act concluded that the holder of a privately-issued Treasury receipt is, for virtually all purposes, a holder of an interest in the underlying Treasury security.[9] The Board therefore does not object to the treatment of privately-issued Treasury receipts as exempted securities for purposes of Regulation T. The staff opinion to the contrary will be deleted.

4. OTC Margin Stock

A comment was received from an investor who believes stock which does not trade on NASDAQ should be marginable if the issuer has another class of marginable stock whose price is used to determine the sale price of the nonmargin stock. This situation is not being addressed by the proposed amendments. In addition to the complexity of covering such a limited group of stocks, this type of stock cannot be purchased by the general public and therefore no bid prices are available.

5. Nonsecurities Instruments

The Public Securities Association (PSA) and a broker-dealer comment that creditors should be able to extend credit on commercial paper, certificates of deposit (CDs), and bankers acceptances (BAs). All of these instruments may be used collateral for a nonpurpose loan (i.e., a loan that is not made for the purpose of purchasing, carrying, or trading in securities). Section 7(c) of the Act[10] prohibits the Board from permitting broker-dealers to accept nonsecurities as collateral in a margin account. Although commercial paper is a security and can be held in a margin account, Regulation T denies loan value to domestic debt securities that are not SEC-registered. Therefore, commercial paper is a nonmargin, nonexempted security and the Supplement to Regulation T requires a margin of 100 percent if held in a margin account.

B. Cash Account

1. Permissible Transactions

Proposed changes to the cash account concerning options are discussed in this preamble in section I.B.2. In addition, one commenter would like confirmation that customers may purchase CDs and other nonsecurities products in the cash account. A 1988 staff opinion confirmed that industry practice is to use the cash account to record the purchase of both securities and nonsecurities,[11] and the Board is proposing to add language to the cash account section of the regulation to codify this position.

2. Net settlement

In order to guard against free-riding, net settlement of trades in a cash account generally is not permitted. Customers are required to pay for all purchases in full without netting sale proceeds from securities purchased and sold on the same day in order to avoid imposition of the 90-day freeze described in § 220.8(c) of Regulation T. In 1988, Board staff confirmed two statutory exceptions to this general rule for transactions in mortgage-related securities[12] and exempted securities.[13] Some broker-dealers comment that customers should be able to net settle all transactions in a cash account as long as the regulation states that day trading is not permitted in that account. No changes are being proposed in this area as allowing net settlement of all trades in the cash account would complicate a creditor's ability to prevent free-riding in the cash account.

3. 90-Day Freeze

A customer who sells a security purchased in a cash account before making full cash payment must have sufficient funds in the account by trade date for any purchases during the next 90 days. This restriction is known as the ''90-day freeze.'' One broker-dealer suggested the freeze should not apply if the cash account holds marginable securities with sufficient loan value to pay for the securities that have been sold before having been paid for. This suggestion is contrary to the nature of the cash account. A customer who contemplates the need for credit to settle securities purchases should be using a margin account and not a cash account.

Another broker-dealer believes the freeze should not apply if a customer decides to liquidate a purchase made on a DVP basis when the customer is ready to make full payment but the selling broker does not make timely delivery and the security is otherwise unavailable. The Board agrees that a customer should not be subject to the 90-day restriction when it decides to liquidate a transaction that the counterparty cannot complete.

C. Other Accounts

1. Arbitrage Account

Transactions effected in the arbitrage account are not subject to Regulation T margin requirements. The SIA and a broker-dealer have requested that the arbitrage account no longer require that the transactions be entered into to take advantage of a concurrent disparity in prices. However, elimination of the requirement that the two transactions yield an immediate gain would expand this special provision beyond those transactions which perform a market function by bringing together the prices of securities or markets which should be the same. Therefore no changes are being proposed to the arbitrage account.

2. Broker-Dealer Credit Account

The broker-dealer credit account is normally available only for broker-dealers.[14] However, the brokerage industry has developed a service known as ''prime brokerage'' in which a customer maintains a cash and/or margin account with a ''prime broker'' to record transactions executed at one or more executing brokers. Industry practice has been for the executing broker to use the broker-dealer credit account to record the transactions sent

[8] Staff Opinion of December 13, 1984, *FRRS* 5–628.13.

[9] Staff Opinion of January 10, 1994, *FRRS* 4–655.5.

[10] 15 U.S.C. 78g(c).

[11] *FRRS* 5–615.955.

[12] *FRRS* 5–615.952.

[13] *FRRS* 5–628.17.

[14] As noted in the section on foreign broker-dealers, the Board is proposing to allow foreign broker-dealers to use the broker-dealer credit account when purchasing securities on a DVP basis.

to the prime broker (who enforces Regulation T vis-a-vis the customer). After discussions with Board staff and an SIA committee, the SEC issued a no action letter last year describing requirements that must be followed in connection with prime brokerage.[15] The Board is proposing to add language to the broker-dealer credit account to officially acknowledge its use in prime brokerage transactions.

D. Other Transactions

1. Repurchase Agreements

A repurchase agreement from a broker-dealer's point of view may be viewed as a borrowing by the creditor and should not generally be covered by the Board's margin regulations as long as the security is not subject to the restrictions imposed by section 8(a) of the Act. The repurchase agreements addressed herein are reverse repurchase agreements in which a customer sells a security to a creditor with an agreement to repurchase from the creditor at a later time. Repurchase agreements in government securities are permitted in the government securities account created last year.[16]

In addition to repurchase agreements on government securities the PSA, SIA and several broker-dealers request an amendment that would permit repurchase agreements on all fixed income securities with good faith loan value, although the PSA acknowledges that it may be appropriate to treat these transactions as margin loans. However, broker-dealers traditionally require 20 percent margin when financing nonexempted debt securities and do not lend the 100 percent implied in structuring the transaction as a repurchase agreement. Although the PSA acknowledges the resemblance between repurchase agreements and margin loans, it states that practical problems make the cash account or a new account more appropriate. Although the collection of margin from a customer by a broker-dealer would seem to indicate that the transaction is properly recorded in the margin account, the Board is soliciting comment on the advisability of creating a new account for repurchase agreements on securities other than government securities in which margin would be collected as if the transaction were a conventional margin loan. The PSA, SIA, and a law firm also request creation of a new account to allow forward transactions, which are not permitted under Regulation T unless the security is trading on a when-issued basis or is a government or mortgage-related security. Comment is also invited on the advisability of accommodating forward transactions accompanied by the deposit required for a conventional margin loan in an account other than a margin account.

The PSA and SIA would also like creditors to be able to effect repurchase agreements on money market instruments that may not qualify as securities. Such transactions are permissible in the nonsecurities credit account as long as the proceeds are not used for purpose credit.

2. Two-Tiered Market

The SIA and several broker-dealers believe the Board should establish an account or subaccount where creditors may effect and finance all securities transactions on a good faith basis for customers who meet some level of financial sophistication. In the past, the Board has amended the arranging section of Regulation T to permit creditors to arrange for certain types of credit for sophisticated customers.[17] No further relaxation of the regulation is being proposed in this area at this time.

3. Use of Money Market Funds

As noted above,[18] the Board is proposing to add money market mutual funds to the list of cash equivalents available to cover a put written in the cash account and give the fund shares good faith loan value in a margin account. The SIA-Credit Division and two other broker-dealers believe money market mutual funds should be treated as cash without having to be liquidated. Although the Board recognizes that money market shares are often viewed as cash equivalents, they are not cash. A customer who is required to deposit cash pursuant to Regulation T must liquidate the shares to realize cash.

IV. Broker-Dealer Transactions

A. Credit Extended to Other Broker-Dealers

1. All Broker-Dealers

The commenters were split on the question of whether broker-dealers should continue to be treated as customers under Regulation T. The principal argument in favor of special treatment for broker-dealers is that they are subject to minimum net capital requirements that impose a limit on leverage, albeit greater leverage than that permitted public customers. The Board continues to believe special credit (i.e., lower margin) is appropriate when broker-dealers perform a market function, but is not proposing treatment that differs from that for public customers for reasons of equity.

2. Specialists and Market-Makers

Regulation T permits special credit for broker-dealers performing a market function. The Board is proposing clarifying language to the provisions describing OTC market makers and third-market makers to respond to questions that have arisen since the regulation was last revised.

The SIA would like the Board to permit deficit financing of specialists, eliminate restrictions on their permitted offsets and eliminate the restriction in § 220.12(b)(4) of Regulation T concerning free-riding by specialists. As discussed in this preamble in section I.A.2.c., the Board is proposing to allow any permitted offset that is permissible under SEC-approved rules of the creditor's examining authority. Although the Board supports the concept of good faith credit for specialist transactions, deficit financing is a form of unsecured credit, which is prohibited by section 7(c) of the Act.[19] The restriction on free-riding by specialists by its terms does not apply to any specialist on an exchange that has an SEC-approved rule on the same subject.

One broker-dealer suggested expanding the definition of OTC market-maker to include market makers of convertible bonds who post their prices in the ''yellow sheets'' or deal in convertible bonds traded pursuant to SEC Rule 144A.[20] Convertible bonds are equity securities under the Act[21] and the Board has designated convertible bonds as OTC margin stock when they meet the criteria in section 220.17 of Regulation T. OTC market-makers are registered with NASDAQ as such and are required to engage in a certain level of market-making, as are specialists. The Board does not permit good faith credit for broker-dealers making a market in equity securities via the ''pink sheets.'' Consistency argues against permitting such credit for broker-dealers making a market in convertible bonds via the

[15] Letter of January 25, 1994, from Brandon Becker, Esq. to Mr. Jeffrey C. Bernstein, reprinted in CCH Federal Securities Law Reporter at ¶ 76,819.

[16] See 59 FR 53565 (October 25, 1994).

[17] For example, the exemption in section 220.13(b) requires that the sale of securities be effected pursuant to the SEC's private placement exception from registration. Such sales must be made to sophisticated investors.

[18] See section I.A.2.b. on the cash account under options and section III.A.2.b. on mutual funds above.

[19] 15 U.S.C. 78g(c).

[20] 17 CFR 230.144A.

[21] Section 3(a)(11) of the Act (15 U.S.C. 78c(a)(11)) defines equity security to include any security convertible into an equity security.

''yellow sheets'' or those trading pursuant to SEC Rule 144A.

3. Joint Back Office Arrangements

Section 220.11(a)(2) of Regulation T allows broker-dealers to set up a joint back office (JBO). The owners of the JBO are not considered customers of the clearing organization and therefore no Regulation T margin is required, although the clearing firm generally obtains the appropriate securities haircut from its participants. When the JBO section was adopted, the Board assumed there would be a reasonable relationship between the creditors' ownership interests and the amount of business conducted and did not adopt an explicit requirement for the amount of ownership each broker-dealer should have in the JBO. Since adoption of the provision, several stock exchanges have expressed concern that JBOs are permitting credit far in excess of the participant's interest. Much of the activity was attributed to index options specialists seeking good faith financing for stock baskets, which is not otherwise permitted under Regulation T. As discussed in the section on the market functions account under options, the Board is proposing to permit such financing under SEC-approved rules of the exchanges and this change should reduce the pressure on JBOs to extend credit greatly disproportionate to the amount of equity ownership. Nevertheless, the Board is also proposing to state explicitly that the participants' ownership interest in the JBO should be reasonably related to the amount of business conducted through it. Three stock exchanges and one other commenter support changes along these lines.

4. Credit to Other Types of Broker-Dealers

Several commenting broker-dealers suggest additional classes of creditors that should be entitled to good faith credit. One broker-dealer suggests creating a new category of broker-dealers entitled to beneficial margin treatment that would be under some affirmative obligation to add liquidity to the market but would not be required to be present on the trading floor. The Board has traditionally allowed good faith credit for specialists engaged in specialist transactions and deferred to the SEC to determine who is a specialist under the Act. It is unclear what the effect would be on specialists if other broker-dealers with lesser market-making obligations were permitted good faith credit on certain transactions.

The SIA-Credit Division believes that self-clearing broker-dealers who choose to go through another broker-dealer should not be required to post customer margin. Board staff has addressed this issue several times [22] and reiterated that the treatment of a broker-dealer depends on whether it clears the transaction itself and not whether it *could* clear the transaction. In addition, a broker-dealer suggested that affiliated broker-dealers should not be treated as customers. Board staff has indicated that affiliated (sister) firms are treated as customers [23] and no policy reasons for changing this have been presented.

B. Borrowing and Lending Securities

Section 220.16 of Regulation T covers the borrowing and lending of securities. Securities may be borrowed or lent in connection with the need to make delivery in short sales and fails to receive. The section covers the borrowing and lending of all types of securities,[24] including those with good faith loan value, and requires enumerated types of collateral worth at least 100 percent of the market value of the securities on a daily basis. Although stock loans are economically equivalent to repurchase agreements, the former are based on the need to make delivery and are not meant to be financing arrangements for the owner of the securities being lent.[25]

1. Collateral

a. *Foreign sovereign debt.* In 1988, the Board amended Regulation T to give good faith loan value to highly rated foreign sovereign bonds. Shortly thereafter, Board staff indicated that these securities should be acceptable as collateral for stock loans if the currency of the lent security is the same as the sovereign bond.[26] The Board is proposing explicitly to add foreign sovereign bonds to the list of collateral in § 220.16 of Regulation T without restriction as to currency. This change was supported by the SIA, SIA-Credit Division, NYSE and several broker-dealers.

b. *SEC customer protection rule.* While § 220.16 of Regulation T covers all borrowing and lending of securities by creditors, the SEC's customer protection rule [27] also applies if the creditor is borrowing securities from its customer. Both rules specify permissible types of collateral. In 1989 the SEC proposed expanding the types of acceptable collateral specified in its rule [28] and its staff issued a no action letter in the interim. Regulation T currently expressly provides for all of these types of collateral, with the exception of foreign sovereign debt, which is being proposed as part of this package. To ensure that acceptable collateral under § 220.16 of Regulation T is always at least as broad as that required by the SEC when creditors borrow securities from their customers, the Board is proposing to refer to the SEC's customer protection rule in § 220.16 of Regulation T.

c. *Other collateral.* The SIA and a broker-dealer seek confirmation that any freely convertible currency may be treated as cash collateral for borrowings of securities. Although this may present a currency risk not originally anticipated, the Board believes that this is permissible, given that such loans are marked-to-market daily with collateral equal to at least 100 percent of the market value of the securities being borrowed.

Several commenters support expanding acceptable collateral to include options or some or all types of marginable securities, while the NYSE is opposed to this concept. Although the Board has gradually expanded the types of acceptable collateral over the years, it has always required collateral with high liquidity and low volatility.

2. Permitted Purposes

a. *Pre-borrowing.* Although Regulation T currently permits borrowing of securities for short sales that have been effected or are in immediate prospect, several commenters support the concept of ''pre-borrowing,'' the borrowing of securities in anticipation of a short sale that may or may not take place in the near future. Pre-borrowing can lead to an attempt to ''squeeze'' the market for a security by locking up all available shares and hindering the ability of others to sell that security short.[29]

[22] See, e.g., Staff Opinion of August 18, 1986, *FRRS* 5–621.16.

[23] Staff Opinion of December 16, 1988, *FRRS* 5–621.18.

[24] The government securities account can be used to conduct all types of permissible transactions involving government securities, including borrowing and lending.

[25] The Financial Accounting Standards Board (FASB) is currently debating the differing treatment of repurchase agreements and stock loans and has tentatively concluded that repurchase agreements should be accounted for as collateralized borrowings if the repurchase agreement entitles the party receiving financial assets subject to repurchase to repledge them but not sell them. Most securities lending transactions that entitle the party receiving the financial assets to sell them would be accounted for as sales. Staff plans to review the Regulation T treatment in this area once FASB reaches a decision on the matter.

[26] Staff Opinion of September 23, 1988, *FRRS* 5–615.15.

[27] SEC Rule 15c3–3, 17 CFR 240.15c3–3.

[28] SEC Release No. 34–26608, 54 FR 10680 (March 15, 1989).

[29] Board staff has indicated that a permissible alternative to pre-borrowing is the payment of a

Continued

b. *Dividend reinvestment and stock purchase plans.* In addition to pre-borrowing, commenters such as the NYSE and several broker-dealers suggest that broker-dealers be permitted to borrow securities in order to participate in an issuer's dividend reinvestment and stock purchase plan. These plans allow dividends, and often additional funds, to be used to purchase additional shares of the issuer, usually at a discount from the current stock price. Board staff opinions and SEC enforcement actions have made clear that Regulation T as currently written does not permit the borrowing of securities for this purpose.[30]

The Board is not proposing to include dividend reinvestment and stock purchase plans as a permitted purpose for borrowing securities. Permitting such borrowing would not be consistent with existing Board policy concerning borrowing and lending securities. The Board has permitted securities lending where it is needed for the smooth operation of the securities markets, i.e. short sales and fails to receive securities. This view was echoed by the Group of Thirty when they recommended removing impediments to securities lending to allow delivery of securities. Participation in dividend reinvestment and stock purchase plans does not help the securities markets complete transactions as broker-dealers do not actually want or need possession of the securities. Nevertheless, in light of comments received indicating that many issuers view these programs as a less costly means of raising capital, the Board is soliciting comment on whether section 220.16 of Regulation T should be amended to accommodate these plans.

c. *Other purposes.* The PSA, SIA and a broker-dealer recommend adding repurchase agreements to the list of permitted purposes. Since a repurchase agreement represents the sale of a security with a promise to repurchase it at a later date, a creditor who does not own the security subject to the repurchase agreement is engaging in a short sale and therefore may borrow the security pursuant to section 220.16 of Regulation T.[31]

One broker-dealer believes institutions such as banks and insurance companies should be able to borrow securities from a creditor if they say it is for a permitted purpose. However, Regulation T and the U.S. securities markets in general presume that the borrowing of securities will be effected by the broker-dealer that executes the trade. Permitting an entity other than a broker-dealer to borrow securities for a transaction effected by a broker-dealer would permit circumvention of the Board's margin requirements.

C. Borrowing by Creditors

All of the commenters addressing section 8(a) of the Act, which limits the source of certain loans to broker-dealers to member banks and some nonmember banks, support expansion of the types of lenders described in section 8(a) or a reduction in the types of transactions subject to the restriction. The SEC has recently exempted all listed debt securities from the scope of section 8(a) of the Act,[32] with the result that only loans secured by exchange-traded equity securities are still subject to the restriction.

A wide variety of commenters recommend legislation be introduced to loosen the restrictions of section 8(a). Such legislation is currently pending in Congress.[33]

V. Section-by-Section Explanation of Proposed Changes

Section 220.2 Definitions

The following new definitions are being proposed: *cash equivalent, covered option transaction, exempted securities mutual fund, foreign person, money market mutual fund, non-U.S. traded foreign security, and permitted offset position.* The following definitions would be modified: *escrow agreement, in the money, margin security, OTC margin bond, OTC margin stock, short call or short put, and underlying security.* The definition of in or at the money would be deleted and SEC-approved rules of the appropriate SRO would govern permitted offsets for specialists.

Section 220.3 General Provisions

Section 220.3(e)(4), ''Receipt of funds or securities,'' is used by creditors to temporarily finance the exercise of a customer's employee stock option. The section would be reworded to permit such short-term financing for anyone entitled to receive or acquire any securities pursuant to an SEC-registered employee benefit plan.

Section 220.3(i), ''Variable annuity contracts issued by insurance companies,'' would be deleted, although no substantive change is intended.

Section 220.4 Margin Account

Section 220.4(b) would contain all provisions of section 220.5, except for those covering specific options transactions. The options provisions would be deleted and SEC-approved rules of the SROs would apply to these transactions.

Section 220.4(c) would no longer prohibit a margin excess in a foreign currency subaccount from offsetting a margin deficiency in another foreign currency subaccount.

Section 220.5 Special Memorandum Account

This account would be moved from section 220.6. No substantive changes are proposed.

Section 220.6 Government Securities Account

This account would be moved from section 220.18. No substantive changes are proposed.

Section 220.8 Cash Account

Section 220.8(a), Permissible transactions,'' would be amended in two ways. First, the cash account would recognize industry practice and specifically permit the sale to a customer of any asset on a cash basis. Second, the covered options transactions permitted under section 220.8(a)(3) would be broadened to include any eligible transaction designated by the SEC-approved rules of the SROs.

Section 220.8(b), ''Time periods for payment; cancellation or liquidation,'' would permit creditors to accept full cash payment from customers for the purchase of foreign securities up to one day after the regular way settlement date.

Section 220.11 Broker-Dealer Credit Account

Three substantive changes are being proposed to section 220.11(a), ''Permissible transactions.'' First, foreign broker-dealers would be permitted to use the account for delivery-versus-payment transactions with U.S. broker-dealers. Second, joint back office arrangements would require a reasonable relationship between the owners' equity interest and the amount of business effected or financed by the joint back office. Third, ''prime broker'' arrangements set up under SEC guidelines would be able to use this

commitment fee to a stock lender. See staff opinion of October 22, 1990, FRRS 5–615.18.

[30] Staff Opinions of March 2, 1984, FRRS 5–615.1 and July 6, 1984, FRRS 5–615.01; see also In re RFG Options, SEC Administrative Proceeding File No. 3–6370, September 26, 1988.

[31] As noted in footnote 29, all transactions involving government securities may be effected in the government securities account without regard to other provisions of Regulation T.

[32] SEC Rule 3a12–11, 17 CFR 240.3a12–11, published at 59 FR 55342, November 7, 1994.

[33] H.R. 1062, 104th Cong., 1st Sess.

account for transactions effected at executing broker-dealers.

Section 220.12 Market Functions Account

Section 220.12(b), ''Specialists,'' would be amended to allow SEC-approved rules of the SROs to determine which permitted offsets can be effected on a good faith basis.

Section 220.13 Arranging for Loans by Others

Changes are proposed for this section in two areas. First, the provision allowing U.S. broker-dealers to arrange for customers to obtain credit from a foreign lender to purchase foreign securities would be expanded to cover short sales while the overall coverage of this provision would be limited to foreign securities that are not publicly traded in the United States. Second, the regulation would explicitly permit U.S. broker-dealers to sell its customers foreign securities with installment features if the offering has only a small U.S. component.

Section 220.16 Borrowing and Lending Securities

Two changes are proposed for this section. First, the required collateral would be expanded to include marginable foreign sovereign debt securities and any collateral that is acceptable to the SEC when a broker-dealer borrows securities from its customer. Second, U.S. broker-dealers would be able to lend foreign securities to a foreign person for any legal purpose and against any legal collateral.

Section 220.18 Supplement: Margin Requirements

Several changes are being proposed. Options would be given fifty percent loan value if listed on a national securities exchange. Mutual funds whose portfolio is limited to exempted securities would be given good faith loan value, as would money market mutual funds.

VI. Regulatory Flexibility Act

The Board believes there will be no significant economic impact on a substantial number of small entities if this proposal is adopted. Comments are invited on this statement.

VII. Paperwork Reduction Act

No additional reporting requirements or modification to existing reporting requirements are proposed.

List of Subjects in 12 CFR Part 220

Banks, banking, Bonds, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investment companies, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board proposes to amend 12 CFR Part 220 as follows:

PART 220—CREDIT BY BROKERS AND DEALERS (REGULATION T)

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q, and 78w.

2. The table of contents for part 220 is amended by revising the entries for §§ 220.1–220.18 and renaming the entry for § 220.19 to read as follows:

* * * * *

3. Sections 220.1 through 220.18 are revised to read as follows:

§ 220.1 Authority, purpose, and scope.

(a) *Authority and purpose.* Regulation T (this part) is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Securities Exchange Act of 1934 (the Act) (15 U.S.C. 78a *et seq.*). Its principal purpose is to regulate extensions of credit by and to brokers and dealers; it also covers related transactions within the Board's authority under the Act. It imposes, among other obligations, initial margin requirements and payment rules on securities transactions.

(b) *Scope.* (1) This part provides a margin account and eight special purpose accounts in which to record all financial relations between a customer and a creditor. Any transaction not specifically permitted in a special account shall be recorded in a margin account.

(2) This part does not preclude any exchange, national securities association, or creditor from imposing additional requirements or taking action for its own protection.

(3) This part does not apply to transactions between a customer and a broker or dealer registered only under section 15C of the Act.

§ 220.2 Definitions.

The terms used in this part have the meanings given them in section 3(a) of the Act or as defined in this section.

Cash equivalent means securities issued or guaranteed by the United States or its agencies, negotiable bank certificates of deposit, bankers acceptances issued by banking institutions in the United States and payable in the United States, or money market mutual funds.

Covered option transaction means:

(1) In the case of a short call, the underlying security (or a security immediately convertible into the underlying security, without the payment of money) is held in or purchased for the account on the same day, and the option premium is held in the account until cash payment for the underlying or convertible security is received; or

(2) In the case of a short put, the creditor obtains cash in an amount equal to the exercise price or holds in the account cash equivalents with a current market value at least equal to the exercise price and with one year or less to maturity; or

(3) Any other transaction involving options or warrants in which the customer's risk is limited to a fixed amount and is not subject to early exercise if:

(i) The amount at risk is held in the account in cash, cash equivalents, or via an escrow receipt; and

(ii) The transaction has been defined as eligible for the cash account by the rules of the registered national securities exchange authorized to trade the option or warrant, provided that all such rules have been approved or amended by the SEC.

Credit balance means the cash amount due the customer in a margin account after debiting amounts transferred to the special memorandum account.

Creditor means any broker or dealer (as defined in sections 3(a)(4) and 3(a)(5) of the Act), any member of a national securities exchange, or any person associated with a broker or dealer (as defined in section 3(a)(18) of the Act), except for business entities controlling or under common control with the creditor.

Customer includes:

(1) Any person or persons acting jointly:

(i) To or for whom a creditor extends, arranges, or maintains any credit; or

(ii) Who would be considered a customer of the creditor according to the ordinary usage of the trade;

(2) Any partner in a firm who would be considered a customer of the firm absent the partnership relationship; and

(3) Any joint venture in which a creditor participates and which would be considered a customer of the creditor if the creditor were not a participant.

Debit balance means the cash amount owed to the creditor in a margin account after debiting amounts transferred to the special memorandum account.

Delivery against payment, Payment against delivery, or a C.O.D. transaction refers to an arrangement under which a creditor and a customer agree that the creditor will deliver to, or accept from, the customer, or the customer's agent, a security against full payment of the purchase price.

Equity means the total current market value of security positions held in the margin account plus any credit balance less the debit balance in the margin account.

Escrow agreement means any agreement issued in connection with a call or put option under which a bank or any person designated as a control location under paragraph (c) of SEC Rule 15c3–3 (17 CFR 240.15c3–3), holding the underlying security, foreign currency, certificate of deposit, or required cash, is obligated to deliver to the creditor (in the case of a call option) or accept from the creditor (in the case of a put option) the underlying security, foreign currency, or certificate of deposit against payment of the exercise price upon exercise of the call or put.

Examining authority means:

(1) The national securities exchange or national securities association of which a creditor is a member; or

(2) If a member of more than one self-regulatory organization, the organization designated by the SEC as the examining authority for the creditor.

Exempted securities mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), provided the company has at least 95 percent of its assets continuously invested in exempted securities (as defined in section 3(a)(12) of the Act).

Foreign margin stock means: (1) A foreign security that is an equity security and that appears on the Board's periodically published List of Foreign Margin Stocks based on information submitted by a self-regulatory organization under procedures approved by the Board. *Foreign person* means a person other than a United States person as defined in section 7(f) of the Act.

Foreign security means a security issued in a jurisdiction other than the United States.

Good faith margin means the amount of margin which a creditor, exercising sound credit judgment, would customarily require for a specified security position and which is established without regard to the customer's other assets or securities positions held in connection with unrelated transactions.

In the money means the current market price of the underlying security or index is not below (with respect to a call option) or above (with respect to a put option) the exercise price of the option.

Margin call means a demand by a creditor to a customer for a deposit of additional cash or securities to eliminate or reduce a margin deficiency as required under this part.

Margin deficiency means the amount by which the required margin exceeds the equity in the margin account.

Margin excess means the amount by which the equity in the margin account exceeds the required margin. When the margin excess is represented by securities, the current value of the securities is subject to the percentages set forth in § 220.18 (Supplement: Margin requirements).

Margin security means:

(1) Any registered security;

(2) Any OTC margin stock;

(3) Any OTC margin bond;

(4) Any OTC security designated as qualified for trading in the National Market System under a designation plan approved by the Securities and Exchange Commission (NMS security);

(5) Any security issued by either an open-end investment company or unit investment trust which is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8);

(6) Any foreign margin stock; or

(7) Any debt security convertible into a margin security.

Money market mutual fund means any security issued by an investment company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) that is considered a money market fund under SEC Rule 2a–7 (17 CFR 270.2a–7).

Nonexempted security means any security other than an exempted security (as defined in section 3(a)(12) of the Act).

Nonmember bank means a bank that is not a member of the Federal Reserve System.

Non-U.S. traded foreign security means a foreign security that is neither a registered security nor one listed on NASDAQ.

OTC margin bond means:

(1) A debt security not traded on a national securities exchange which meets all of the following requirements:

(i) At the time of the original issue, a principal amount of not less than $25,000,000 of the issue was outstanding;

(ii) The issue was registered under section 5 of the Securities Act of 1933(15 U.S.C. 77e) and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Act or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act; and

(iii) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments; or

(2) A private pass-through security (not guaranteed by an agency of the U.S. government) meeting all of the following requirements:

(i) An aggregate principal amount of not less than $25,000,000 (which maybe issued in series) was issued pursuant to a registration statement filed with the SEC under section 5 of the Securities Act of 1933 (15 U.S.C. 77e);

(ii) Current reports relating to the issue have been filed with the SEC; and

(iii) At the time of the credit extension, the creditor has a reasonable basis for believing that mortgage interest, principal payments and other distributions are being passed through as required and that the servicing agent is meeting its material obligations under the terms of the offering; or

(3) A mortgage related security as defined in section 3(a)(41) of the Act; or

(4) A debt security issued or guaranteed as a general obligation by the government of a foreign country, its provinces, states, or cities, or a supranational entity, if at the time of the extension of credit one of the following is rated in one of the two highest rating categories by a nationally recognized statistical rating organization:

(i) The issue;

(ii) The issuer or guarantor (implicitly); or

(iii) Other outstanding unsecured long-term debt securities issued or guaranteed by the government or entity; or

(5) A foreign security that is a nonconvertible debt security that meets all of the following requirements:

(i) At the time of original issue, a principal amount of at least $100,000,000 was outstanding;

(ii) At the time of the extension of credit, the creditor has a reasonable

basis for believing that the issuer is not in default on interest or principal payments; and

(iii) At the time of the extension of credit, the issue is rated in one of the two highest rating categories by a nationally recognized statistical rating organization, except that an issue that has not been rated as of the effective date of this provision shall be considered an OTC margin bond if a subsequent unsecured issue of at least $100,000,000 of the same issuer is rated in one of the two highest rating categories by a nationally recognized statistical rating organization.

OTC margin stock means any equity security traded over-the-counter that the Board has determined has the degree of national investor interest, the depth and breadth of market, the availability of information respecting the security and its issuer, and the character and permanence of the issuer to warrant being treated like an equity security traded on a national securities exchange. An OTC stock is not considered to be an OTC margin stock unless it appears on the Board's periodically published list of OTC margin stocks.

Overlying option means:

(1) A put option purchased or a call option written against a long position in an underlying security in the specialist record in § 220.12(b); or

(2) A call option purchased or a put option written against a short position in an underlying security in the specialist record in § 220.12(b).

Payment period means the number of business days in the standard securities settlement cycle in the United States, as defined in paragraph (a) of SEC Rule 15c6–1 (17 CFR 240.15c6–1), plus two business days.

Permitted offset position means a position in securities or other assets underlying options in which a specialist makes a market or a position in options overlying the securities in which a specialist makes a market, provided the positions qualify as permitted offsets under the rules of the national securities exchange with which the specialist is registered, provided that all such rules have been approved or amended by the SEC.

Purpose credit means credit for the purpose of:

(1) Buying, carrying, or trading in securities; or

(2) Buying or carrying any part of an investment contract security which shall be deemed credit for the purpose of buying or carrying the entire security.

Registered security means any security that:

(1) Is registered on a national securities exchange; or

(2) Has unlisted trading privileges on a national securities exchange.

Short call or short put means a call option or a put option that is issued, endorsed, guaranteed or sold in or for an account.

(1) A short call that is not cash-settled obligates the customer to sell the underlying asset at the exercise price upon receipt of a valid exercise notice.

(2) A short put that is not cash-settled obligates the customer to purchase the underlying asset at the exercise price upon receipt of a valid exercise notice.

(3) A short call or a short put that is cash-settled obligates the customer to pay the holder of an in the money long put or call who has exercised the option the cash difference between the exercise price and the current assigned value of the option as established by the option contract.

Specialist joint account means an account which, by written agreement, provides for the commingling of the security positions of the participants and a sharing of profits and losses from the account on some predetermined ratio.

Underlying security means:

(1) the security that will be delivered upon exercise of an option; or

(2) In the case of a cash-settled option, the securities which comprise the index in the same proportion or any other asset from which the option's value is derived.

§ 220.3 General provisions.

(a) *Records.* The creditor shall maintain a record for each account showing the full details of all transactions.

(b) *Separation of accounts.* Except as provided for in the margin account and the special memorandum account, the requirements of an account may not be met by considering items in any other account. If withdrawals of cash or securities are permitted under the regulation, written entries shall be made when cash or securities are used for purposes of meeting requirements in another account.

(c) *Maintenance of credit.* Except as prohibited by this part, any credit initially extended in compliance with this part may be maintained regardless of:

(1) Reductions in the customer's equity resulting from changes in market prices;

(2) Any security in an account ceasing to be margin or exempted; or

(3) Any change in the margin requirements prescribed under this part.

(d) *Guarantee of accounts.* No guarantee of a customer's account shall be given any effect for purposes of this part.

(e) *Receipt of funds or securities.* (1) A creditor, acting in good faith, may accept as immediate payment:

(i) Cash or any check, draft, or order payable on presentation; or

(ii) Any security with sight draft attached.

(2) A creditor may treat a security, check or draft as received upon written notification from another creditor that the specified security, check, or draft has been sent.

(3) Upon notification that a check, draft, or order has been dishonored or when securities have not been received within a reasonable time, the creditor shall take the action required by this part when payment or securities are not received on time.

(4) To temporarily finance a customer's receipt of stock pursuant to an employee benefit plan registered on SEC Form S–8, a creditor may accept, in lieu of the securities, a properly executed exercise notice and instructions to the issuer to deliver the stock to the creditor. Prior to acceptance, the creditor must verify that the issuer will deliver the securities promptly and the customer must designate the account into which the securities are to be deposited.

(f) *Exchange of securities.* (1) To enable a customer to participate in an offer to exchange securities which is made to all holders of an issue of securities, a creditor may submit for exchange any securities held in a margin account, without regard to the other provisions of this part, provided the consideration received is deposited into the account.

(2) If a nonmargin, nonexempted security is acquired in exchange for a margin security, its retention, withdrawal, or sale within 60 days following its acquisition shall be treated as if the security is a margin security.

(g) *Valuing securities.* The current market value of a security shall be determined as follows:

(1) Throughout the day of the purchase or sale of a security, the creditor shall use the security's total cost of purchase or the net proceeds of its sale including any commissions charged.

(2) At any other time, the creditor shall use the closing sale price of the security on the preceding business day, as shown by any regularly published reporting or quotation service. If there is no closing price, the creditor may use any reasonable estimate of the market value of the security as of the close of business on the preceding business day.

(h) *Innocent mistakes.* If any failure to comply with this part results from a mistake made in good faith in executing a transaction or calculating the amount of margin, the creditor shall not be deemed in violation of this part if, promptly after the discovery of the mistake, the creditor takes appropriate corrective action.

§ 220.4 Margin account.

(a) *Margin transactions.* (1) All transactions not specifically authorized for inclusion in another account shall be recorded in the margin account.

(2) A creditor may establish separate margin accounts for the same person to:

(i) Clear transactions for other creditors where the transactions are introduced to the clearing creditor by separate creditors; or

(ii) Clear transactions through other creditors if the transactions are cleared by separate creditors; or

(iii) Provide one or more accounts over which the creditor or a third party investment adviser has investment discretion.

(b) *Required margin*—(1) *Applicability.* The required margin for each long or short position in securities is set forth in § 220.18 (Supplement: Margin requirements) and is subject to the following exceptions and special provisions.

(2) *Short sale against the box.* A short sale ''against the box'' shall be treated as a long sale for the purpose of computing the equity and the required margin.

(3) *When issued securities.* The required margin on a net long or net short commitment in a when issued security is the margin that would be required if the security were an issued margin security, plus any unrealized loss on the commitment or less any unrealized gain.

(4) *Stock used as cover.* (i) When a short position held in the account serves in lieu of the required margin for a short put, the amount prescribed by paragraph (b)(1) of this section as the amount to be added to the required margin in respect of short sales shall be increased by any unrealized loss on the position.

(ii) When a security held in the account serves in lieu of the required margin for a short call, the security shall be valued at no greater than the exercise price of the short call.

(5) *Accounts of partners.* If a partner of the creditor has a margin account with the creditor, the creditor shall disregard the partner's financial relations with the firm (as shown in the partner's capital and ordinary drawing accounts) in calculating the margin or equity of the partner's margin account.

(6) *Contribution to joint venture.* If a margin account is the account of a joint venture in which the creditor participates, any interest of the creditor in the joint account in excess of the interest which the creditor would have on the basis of its right to share in the profits shall be treated as an extension of credit to the joint account and shall be margined as such.

(7) *Transfer of accounts.* (i) A margin account that is transferred from one creditor to another may be treated as if it had been maintained by the transferee from the date of its origin, if the transferee accepts, in good faith, a signed statement of the transferor (or, if that is not practicable, of the customer), that any margin call issued under this part has been satisfied.

(ii) A margin account that is transferred from one customer to another as part of a transaction, not undertaken to avoid the requirements of this part, may be treated as if it had been maintained for the transferee from the date of its origin, if the creditor accepts in good faith and keeps with the transferee account a signed statement of the transferor describing the circumstances for the transfer.

(8) *Credit denominated in foreign currency.* A creditor may extend credit denominated in a foreign currency secured by foreign margin securities denominated or traded in the same foreign currency and specifically identified on the creditor's books and records as securing the foreign currency debit.

(c) *When additional margin is required*—(1) *Computing deficiency.* All transactions on the same day shall be combined to determine whether additional margin is required by the creditor. For the purpose of computing equity in an account, security positions are established or eliminated and a credit or debit created on the trade date of a security transaction. Additional margin is required on any day when the day's transactions create or increase a margin deficiency in the account and shall be for the amount of the margin deficiency so created or increased.

(2) *Satisfaction of deficiency.* The additional required margin may be satisfied by a transfer from the special memorandum account or by a deposit of cash, margin securities, exempted securities, or any combination thereof.

(3) *Time limits.* (i) A margin call shall be satisfied within one payment period after the margin deficiency was created or increased.

(ii) The payment period may be extended for one or more limited periods upon application by the creditor to its examining authority unless the examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action. Applications shall be filed and acted upon prior to the end of the payment period or the expiration of any subsequent extension.

(4) *Satisfaction restriction.* Any transaction, position, or deposit that is used to satisfy one requirement under this part shall be unavailable to satisfy any other requirement.

(d) *Liquidation in lieu of deposit.* If any margin call is not met in full within the required time, the creditor shall liquidate securities sufficient to meet the margin call or to eliminate any margin deficiency existing on the day such liquidation is required, whichever is less. If the margin deficiency created or increased is $1000 or less, no action need be taken by the creditor.

(e) *Withdrawals of cash or securities.* (1) Cash or securities may be withdrawn from an account, except if:

(i) Additional cash or securities are required to be deposited into the account for a transaction on the same or a previous day; or

(ii) The withdrawal, together with other transactions, deposits, and withdrawals on the same day, would create or increase a margin deficiency.

(2) Margin excess may be withdrawn or may be transferred to the special memorandum account (§ 220.5) by making a single entry to that account which will represent a debit to the margin account and a credit to the special memorandum account.

(3) If a creditor does not receive a distribution of cash or securities which is payable with respect to any security in a margin account on the day it is payable and withdrawal would not be permitted under paragraph, (e) of this section, a withdrawal transaction shall be deemed to have occurred on the day the distribution is payable.

(f) *Interest, service charges, etc.* (1) Without regard to the other provisions of this section, the creditor, in its usual practice, may debit the following items to a margin account if they are considered in calculating the balance of such account:

(i) Interest charged on credit maintained in the margin account;

(ii) Premiums on securities borrowed in connection with short sales or to effect delivery;

(iii) Dividends, interest, or other distributions due on borrowed securities;

(iv) Communication or shipping charges with respect to transactions in the margin account; and

(v) Any other service charges which the creditor may impose.

(2) A creditor may permit interest, dividends, or other distributions credited to a margin account to be withdrawn from the account if:

(i) The withdrawal does not create or increase a margin deficiency in the account; or

(ii) The current market value of any securities withdrawn does not exceed 10 percent of the current market value of the security with respect to which they were distributed.

§ 220.5 Special memorandum account.

(a) A special memorandum account (SMA) may be maintained in conjunction with a margin account. A single entry amount may be used to represent both a credit to the SMA and a debit to the margin account. A transfer between the two accounts may be effected by an increase or reduction in the entry. When computing the equity in a margin account, the single entry amount shall be considered as a debit in the margin account. A payment to the customer or on the customer's behalf or a transfer to any of the customer's other accounts from the SMA reduces the single entry amount.

(b) The SMA may contain the following entries:

(1) Dividend and interest payments;

(2) Cash not required by this part, including cash deposited to meet a maintenance margin call or to meet any requirement of a self-regulatory organization that is not imposed by this part;

(3) Proceeds of a sale of securities or cash no longer required on any expired or liquidated security position that may be withdrawn under § 220.4(e); and

(4) Margin excess transferred from the margin account under § 220.4(e)(2).

§ 220.6 Government securities account.

In a government securities account, a creditor may effect and finance transactions involving government securities, provided the transaction is not prohibited by section 15C of the Act or any rule thereunder.

§ 220.7 Arbitrage account.

In an arbitrage account a creditor may effect and finance for any customer *bona fide* arbitrage transactions. For the purpose of this section, the term ''*bona fide* arbitrage'' means:

(a) A purchase or sale of a security in one market together with an offsetting sale or purchase of the same security in a different market at as nearly the same time as practicable for the purpose of taking advantage of a difference in prices in the two markets; or

(b) A purchase of a security which is, without restriction other than the payment of money, exchangeable or convertible within 90 calendar days of the purchase into a second security together with an offsetting sale of the second security at or about the same time, for the purpose of taking advantage of a concurrent disparity in the prices of the two securities.

§ 220.8 Cash account.

(a) *Permissible transactions.* In a cash account, a creditor, may:

(1) Buy for or sell to any customer any security or other asset if:

(i) There are sufficient funds in the account; or

(ii) The creditor accepts in good faith the customer's agreement that the customer will promptly make full cash payment for the security or asset before selling it and does not contemplate selling it prior to making such payment;

(2) Buy from or sell for any customer any security or other asset if:

(i) The security is held in the account; or

(ii) The creditor accepts in good faith the customer's statement that the security is owned by the customer or the customer's principal, and that it will be promptly deposited in the account;

(3) Issue, endorse, guarantee, or sell an option for any customer as part of a covered option transaction; and

(4) Use an escrow agreement in lieu of the cash or underlying security position if:

(i) In the case of a short call or a short put, the creditor is advised by the customer that the required securities or cash are held by a person authorized to issue an escrow agreement and the creditor independently verifies that the appropriate escrow agreement will be delivered by the person promptly; or

(ii) In the case of a call issued, endorsed, guaranteed, or sold on the same day the underlying security is purchased in the account and the underlying security is to be delivered to a person authorized to issue an escrow agreement, the creditor verifies that the appropriate escrow agreement will be delivered by the person promptly.

(b) *Time periods for payment; cancellation or liquidation*—(1) *Full cash payment.* A creditor shall obtain full cash payment for customer purchases—

(i) Within one payment period of the date:

(A) Any nonexempted security was purchased;

(B) Any when issued security was made available by the issuer for delivery to purchasers;

(C) Any ''when distributed'' security was distributed under a published plan;

(D) A security owned by the customer has matured or has been redeemed and a new refunding security of the same issuer has been purchased by the customer, provided:

(*1*) The customer purchased the new security no more than 35 calendar days prior to the date of maturity or redemption of the old security;

(*2*) The customer is entitled to the proceeds of the redemption; and

(*3*) The delayed payment does not exceed 103 percent of the proceeds of the old security.

(ii) In the case of the purchase of a foreign security, within one payment period of the trade date or within one day after the date on which settlement is required to occur by the rules of the foreign securities market, provided this period does not exceed the maximum time permitted by this part for delivery against payment transactions.

(2) *Delivery against payment.* If a creditor purchases for or sells to a customer a security in a delivery against payment transaction, the creditor shall have up to 35 calendar days to obtain payment if delivery of the security is delayed due to the mechanics of the transaction and is not related to the customer's willingness or ability to pay.

(3) *Shipment of securities, extension.* If any shipment of securities is incidental to consummation of a transaction, a creditor may extend the payment period by the number of days required for shipment, but not by more than one additional payment period.

(4) *Cancellation; liquidation; minimum amount.* A creditor shall promptly cancel or otherwise liquidate a transaction or any part of a transaction for which the customer has not made full cash payment within the required time. A creditor may, at its option, disregard any sum due from the customer not exceeding $1000.

(c) *90 day freeze.* (1) If a nonexempted security in the account is sold or delivered to another broker or dealer without having been previously paid for in full by the customer, the privilege of delaying payment beyond the trade date shall be withdrawn for 90 calendar days following the date of sale of the security. Cancellation of the transaction other than to correct an error shall constitute a sale.

(2) The 90 day freeze shall not apply if:

(i) Within the period specified in paragraph (b)(1) of this section, full payment is received or any check or draft in payment has cleared and the proceeds from the sale are not withdrawn prior to such payment or check clearance; or

(ii) The purchased security was delivered to another broker or dealer for deposit in a cash account which holds sufficient funds to pay for the security. The creditor may rely on a written statement accepted in good faith from the other broker or dealer that sufficient funds are held in the other cash account.

(d) *Extension of time periods; transfers.* (1) Unless the creditor's examining authority believes that the creditor is not acting in good faith or that the creditor has not sufficiently determined that exceptional circumstances warrant such action, it may upon application by the creditor:

(i) Extend any period specified in paragraph (b) of this section;

(ii) Authorize transfer to another account of any transaction involving the purchase of a margin or exempted security; or

(iii) Grant a waiver from the 90 day freeze.

(2) Applications shall be filed and acted upon prior to the end of the payment period, or in the case of the purchase of a foreign security within the period specified in paragraph (b)(1)(ii) of this section, or the expiration of any subsequent extension.

§ 220.9 Nonsecurities credit and employee stock ownership account.

(a) In a nonsecurities credit account a creditor may:

(1) Effect and carry transactions in commodities;

(2) Effect and carry transactions in foreign exchange;

(3) Extend and maintain secured or unsecured nonpurpose credit, subject to the requirements of paragraph (b) of this section; and

(4) Extend and maintain credit to employee stock ownership plans without regard to the other sections of this part.

(b) Every extension of credit, except as provided in paragraphs (a)(1) and (a)(2) of this section, shall be deemed to be purpose credit unless, prior to extending the credit, the creditor accepts in good faith from the customer a written statement that it is not purpose credit. The statement shall conform to the requirements established by the Board. To accept the customer's statement in good faith, the creditor shall be aware of the circumstances surrounding the extension of credit and shall be satisfied that the statement is truthful.

§ 220.10 Omnibus account.

(a) In an omnibus account, a creditor may effect and finance transactions for a broker or dealer who is registered with the SEC under section 15 of the Act and who gives the creditor written notice that:

(1) All securities will be for the account of customers of the broker or dealer; and

(2) Any short sales effected will be short sales made on behalf of the customers of the broker or dealer other than partners.

(b) The written notice required by paragraph (a) shall conform to any SEC rule on the hypothecation of customers' securities by brokers or dealers.

§ 220.11 Broker-dealer credit account.

(a) *Permissible transactions.* In a broker-dealer credit account, a creditor may:

(1) Purchase any security from or sell any security to another creditor or person regulated by a foreign securities authority under a good faith agreement to promptly deliver the security against full payment of the purchase price.

(2) Effect or finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors, provided that the owners' interest is reasonably related to the amount of business they transact through the joint back office.

(3) Extend and maintain credit to any partner or stockholder of the creditor for the purpose of making a capital contribution to, or purchasing stock of, the creditor, affiliated corporation or another creditor.

(4) Extend and maintain, with the approval of the appropriate examining authority:

(i) Credit to meet the emergency needs of any creditor; or

(ii) Subordinated credit to another creditor for capital purposes, if the other creditor:

(A) Is an affiliated corporation or would not be considered a customer of the lender apart from the subordinated loan; or

(B) Will not use the proceeds of the loan to increase the amount of dealing in securities for the account of the creditor, its firm or corporation or an affiliated corporation.

(5) Effect transactions for a customer as part of a ''prime broker'' arrangement in conformity with SEC guidelines.

(b) *Affiliated corporations.* For purposes of paragraphs (a)(3) and (a)(4) of this section ''affiliated corporation'' means a corporation all the common stock of which is owned directly or indirectly by the firm or general partners and employees of the firm, or by the corporation or holders of the controlling stock and employees of the corporation and the affiliation has been approved by the creditor's examining authority.

§ 220.12 Market functions account.

(a) *Requirements.* In a market functions account, a creditor may effect or finance the transactions of market participants in accordance with the following provisions. A separate record shall be kept for the transactions specified for each category described in paragraphs (b) through (e) of this section. Any position in a separate record shall not be used to meet the requirements of any other category.

(b) *Specialists*—(1) *Applicability.* A creditor may clear or finance specialist transactions and permitted offset positions for any specialist, or any specialist joint account, in which all participants, or all participants other than the creditor, are registered as specialists on a national securities exchange that requires regular reports on the use of specialist credit from the registered specialists.

(2) *Required margin.* The required margin for a specialist's transactions shall be:

(i) Good faith margin for:

(A) Any long or short position in a security in which the specialist makes a market;

(B) Any wholly-owned margin security or exempted security; or

(C) Any permitted offset position.

(ii) The margin prescribed by § 220.18 (Supplement: Margin requirements) when a security purchased or sold short in the account does not qualify as a specialist or permitted offset position.

(3) *Additional margin; restriction on ''free-riding''.* (i) Except as required by paragraph (b)(4) of this section, the creditor shall issue a margin call on any day when additional margin is required as a result of specialist transactions. The creditor may allow the specialist a maximum of one payment period to satisfy a margin call.

(ii) If a specialist fails to satisfy a margin call within the period specified in paragraph (b)(3) of this section (and the creditor is required to liquidate securities to satisfy the call), the creditor shall be prohibited for a 15 calendar day period from extending any further credit to the specialist to finance transactions in nonspecialty securities.

(iii) The restriction on ''free-riding'' shall not apply to:

(A) Any specialist on a national securities exchange that has an SEC-approved rule on ''free-riding'' by specialists; or

(B) The acquisition or liquidation of a permitted offset position.

(4) *Deficit status.* On any day when a specialist's separate record would

liquidate to a deficit, the creditor shall not extend any further specialist credit in the account and shall issue a margin call at least as large as the deficit. If the call is not met by noon of the following business day, the creditor shall liquidate positions in the specialist's account.

(5) *Withdrawals.* Withdrawals may be permitted to the extent that the equity exceeds the margin requirements specified in paragraph (b)(2) of this section.

(c) *Underwriters and distributors.* A creditor may effect or finance for any dealer or group of dealers transactions for the purpose of facilitating the underwriting or distribution of all or a part of an issue of securities with a good faith margin.

(d) *OTC marketmakers and third marketmakers.* (1) A creditor may clear or finance with a good faith margin, marketmaking transactions for a creditor who is a registered NASDAQ marketmaker or a qualified third marketmaker as defined in SEC Rule 3b–8 (17 CFR 240.3b–8).

(2) If the credit extended to a marketmaker ceases to be for the purpose of marketmaking, or the dealer ceases to be a marketmaker for an issue of securities for which credit was extended, the credit shall be subject to the margin specified in § 220.18 (Supplement: Margin requirements).

(e) *Odd-lot dealers.* A creditor may clear and finance odd-lot transactions for any creditor who is registered as an odd-lot dealer on a national securities exchange with a good faith margin.

§ 220.13 Arranging for loans by others.

(a) A creditor may not arrange for the extension or maintenance of credit to or for any customer by any person upon terms and conditions other than those upon which the creditor may itself extend or maintain credit under the provisions of this part, except that this limitation shall not apply to credit arranged for a customer which does not violate parts 207 and 221 of this chapter and results solely from:

(1) Investment banking services, provided by the creditor to the customer, including, but not limited to, underwritings, private placements, and advice and other services in connection with exchange offers, mergers, or acquisitions, except for underwritings that involve the public distribution of an equity security with installment or other deferred payment provisions;

(2) The sale of nonmargin securities (including securities with installment or other deferred payment provisions) if the sale is exempted from the registration requirements of the Securities Act of 1933 under section 4(2) of section 4(6) of the Act;

(3) A subsequent loan or advance on a face-amount certificate as permitted under 15 U.S.C. 80a–28(d); or

(4) Credit extended by a foreign person in connection with the purchase or short sale of non-U.S. traded foreign securities.

(b) A creditor shall not be deemed to have arranged credit by effecting the sale of a foreign security offered on an installment basis if no more than 15 percent of the issue is offered to United States persons as defined in section 7(f) of the Act.

§ 220.14 Clearance of securities, options, and futures.

(a) *Credit for clearance of securities.* The provisions of this part shall not apply to the extension or maintenance of any credit that is not for more than one day if it is incidental to the clearance of transactions in securities directly between members of a national securities exchange or association or through any clearing agency registered with the SEC.

(b) *Deposit of securities with a clearing agency.* The provisions of this part shall not apply to the deposit of securities with an options or futures clearing agency for the purpose of meeting the deposit requirements of the agency if:

(1) The clearing agency:

(i) Issues, guarantees performance on, or clears transactions in, any security (including options on any security, certificate of deposit, securities index or foreign currency); or

(ii) Guarantees performance of contracts for the purchase or sale of a commodity for future delivery or options on such contracts;

(2) The clearing agency is registered with the Securities and Exchange Commission or is the clearing agency for a contract market regulated by the Commodity Futures Trading Commission; and

(3) The deposit consists of any margin security and complies with the rules of the clearing agency that have been approved by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

§ 220.15 Borrowing by creditors.

(a) *Restrictions on borrowing.* A creditor may not borrow in the ordinary course of business as a broker or dealer using as collateral any registered nonexempted security, except:

(1) From or through a member bank of the Federal Reserve System; or

(2) From any nonmember bank that has filed with the Board an agreement as prescribed in paragraph (b) of this section, which agreement is still in effect; or

(3) From another creditor if the loan is permissible under this part.

(b) *Agreements of nonmember banks.* (1) A nonmember bank shall file an agreement that conforms to the requirements of section 8(a) of the Act (See Form FR T–1, T–2).

(2) Any nonmember bank may terminate its agreement if it obtains the written consent of the Board.

§ 220.16 Borrowing and lending securities.

(a) Without regard to the other provisions of this part, a creditor may borrow or lend securities for the purpose of making delivery of the securities in the case of short sales, failure to receive securities required to be delivered, or other similar situations. Each borrowing shall be secured by a deposit of one or more of the following: cash, cash equivalents, foreign sovereign nonconvertible debt securities that are margin securities, collateral acceptable for borrowings of securities pursuant to SEC Rule 15c3–3 (17 CFR 240.15c3–3), or irrevocable letters of credit issued by a bank insured by the Federal Deposit Insurance Corporation or a foreign bank that has filed an agreement with the Board on Form FR T–1, T–2. Such deposit made with the lender of the securities shall have at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

(b) A creditor may lend non-U.S. traded foreign securities to a foreign person for any purpose lawful in the country in which they are to be used. Each borrowing shall be secured with collateral having at all times a value at least equal to 100 percent of the market value of the securities borrowed, computed as of the close of the preceding business day.

§ 220.17 Requirements for the list of marginable OTC stocks and the list of foreign margin stocks.

(a) *Requirements for inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stock, as determined by the Board, is at least $5 per share;

(3) The stock is registered under section 12 of the Act, is issued by an

insurance company subject to section 12(g)(2)(G) of the Act, is issued by a closed-end investment management company subject to registration pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8), is an American Depository Receipt (ADR) of a foreign issuer whose securities are registered under section 12 of the Act, or is a stock of an issuer required to file reports under section 15(d) of the Act;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The stock has been publicly traded for at least six months;

(6) The issuer has at least $4 million of capital, surplus, and undivided profits;

(7) There are 400,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors or beneficial owners of more than 10 percent of the stock;

(8) There are 1,200 or more holders of record, as defined in SEC Rule 12g5–1(17 CFR 240.12g5–1), of the stock who are not officers, directors or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock as determined by the Board, is at least 500 shares; and

(9) The issuer or a predecessor in interest has been in existence for at least three years.

(b) *Requirements for continued inclusion on the list of marginable OTC stocks.* Except as provided in paragraph (f) of this section, OTC margin stock shall meet the following requirements:

(1) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit bona fide bids and offers to an automated quotations system for their own accounts;

(2) The minimum average bid price of such stocks, as determined by the Board, is at least $2 per share;

(3) The stock is registered as specified in paragraph (a)(3) of this section;

(4) Daily quotations for both bid and asked prices for the stock are continuously available to the general public;

(5) The issuer has at least $1 million of capital, surplus, and undivided profits;

(6) There are 300,000 or more shares of such stock outstanding in addition to shares held beneficially by officers, directors, or beneficial owners of more than 10 percent of the stock; and

(7) There continue to be 800 or more holders of record, as defined in SEC Rule 12g5–1 (17 CFR 240.12g5–1), of the stock who are not officers, directors, or beneficial owners of 10 percent or more of the stock, or the average daily trading volume of such stock, as determined by the Board, is at least 300 shares.

(c) *Requirements for inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security is listed for trading on or through the facilities of a foreign securities exchange or a recognized foreign securities market and has been trading on such exchange or market for at least six months;

(2) Daily quotations for both bid and asked or last sale prices for the security provided by the foreign securities exchange or foreign securities market on which the security is traded are continuously available to creditors in the United States pursuant to an electronic quotation system;

(3) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $1 billion;

(4) The average weekly trading volume of such security during the preceding six months is either at least 200,000 shares or $1 million; and

(5) The issuer or a predecessor in interest has been in existence for at least five years.

(d) *Requirements for continued inclusion on the list of foreign margin stocks.* Except as provided in paragraph (f) of this section, foreign margin stock shall meet the following requirements:

(1) The security continues to meet the requirements specified in paragraphs (c)(1) and (2) of this section;

(2) The aggregate market value of shares, the ownership of which is unrestricted, is not less than $500 million; and

(3) The average weekly trading volume of such security during the preceding six months is either at least 100,000 shares or $500,000.

(e) *Removal from the lists.* The Board shall periodically remove from the lists any stock that:

(1) Ceases to exist or of which the issuer ceases to exist; or

(2) No longer substantially meets the provisions of paragraphs (b) or (d) of this section or the definition of OTC margin stock.

(f) *Discretionary authority of Board.* Without regard to other paragraphs of this section, the Board may add to, or omit or remove from the list of marginable OTC stocks and the list of foreign margin stocks and equity security, if in the judgment of the Board, such action is necessary or appropriate in the public interest.

(g) *Unlawful representations.* It shall be unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the list of marginable OTC stocks or the list of foreign margin stocks is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the lists or stocks on those lists shall be an unlawful representation.

§ 220.18 Supplement: Margin requirements.

The required margin for each security position held in a margin account shall be as follows:

(a) Margin equity security, except for an exempted security, money market mutual fund or exempted securities mutual fund: 50 percent of the current market value of the security or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(b) Exempted security, registered nonconvertible debt security, OTC margin bond, money market mutual fund or exempted securities mutual fund: The margin required by the creditor in good faith or the percentage set by the regulatory authority where the trade occurs, whichever is greater.

(c) Short sale of nonexempted security, except for a registered nonconvertible debt security or OTC margin bond: 150 percent of the current market value of the security, or 100 percent of the current market value if a security exchangeable or convertible within 90 calendar days without restriction other than the payment of money into the security sold short is held in the account.

(d) Short sale of an exempted security, registered nonconvertible debt security or OTC margin bond: 100 percent of the current market value of the security plus the margin required by the creditor in good faith.

(e) Nonmargin, nonexempted security: 100 percent of the current market value.

(f) Short put or short call on a security, certificate of deposit, securities index or foreign currency:

(1) In the case of puts and calls issued by a registered clearing corporation and listed or traded on a registered national securities exchange or a registered securities association, the amount, or other position, specified by the rules of the registered national securities exchange or the registered securities association authorized to trade the option, provided that all such rules have been approved or amended by the SEC; or

(2) In the case of all other puts and calls, the amount, or other position, specified by the maintenance rules of the creditor's examining authority.

§ 220.19 [Removed]

4. Section 229.19 is removed.

By order of the Board of Governors of the Federal Reserve System, June 21, 1995.

William W. Wiles,

Secretary of the Board.

[FR Doc. 95–15680 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–23–1–6827b; A–1–FRL–5214–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Gasoline Marketing Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on July 6, 1994. This revision consists of regulations which require the implementation of reasonably available control technology (RACT) for controlling volatile organic compound (VOC) emissions from gasoline marketing operations. In the Final Rules Section of this **Federal Register**, EPA is approving the gasoline marketing regulations included in the State's July 6, 1994 SIP submittal. EPA is approving several of these regulations as a direct final rule without prior proposal because the Agency views them 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 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. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before July 31, 1995.

ADDRESSES: Comments may be mailed to Susan Studlien, Acting Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 19, 1995.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 95–15958 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[WI53–01–6914; FRL–5250–2]

Redesignation of the Forest County Potawatomi Community to a PSD Class I Area; State of Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this action is to propose approval and seek public comment on the request by the Forest County Potawatomi (FCP) Tribal Council to redesignate lands within the FCP Reservation in the State of Wisconsin to Class I under USEPA's regulations for prevention of significant deterioration (PSD) of air quality. The Class I designation will result in lowering the allowable increases in ambient concentrations of particulate matter (PM), sulfur dioxide (SO_2), and nitrogen oxides (NO_X) on certain of the FCP Community's lands.

DATES: Comments must be received on or before September 5, 1995. An informational meeting and public hearing on this proposal will be held on August 2, 1995. The informational meeting will start at 2:00 pm CDT and the public hearing will immediately follow it.

ADDRESSES: Written comments should be addressed to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604.

An informational meeting on Class I PSD redesignations in general and a public hearing on the FCP redesignation request in particular will be held at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin starting at 2:00 pm CDT on August 2, 1995. The hearing will be strictly limited to the subject matter of the proposal, which is that the proposed redesignation meets the procedural requirements.

Supporting information used in developing the proposed rule and materials submitted to USEPA relevant to the proposed action are available during normal business hours for public inspection and copying at the Air Toxics and Radiation Branch, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (AT–18J), Chicago, Illinois 60604. A copy of this information and materials is also available for inspection at the Crandon Public Library, 104 South Lake Avenue, Crandon, Wisconsin 54520–1458.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, USEPA Region 5 (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0671.

SUPPLEMENTARY INFORMATION: Part C Title I of the Clean Air Act (Act) provides for the prevention of significant deterioration of air quality. The intent of Part C is to prevent deterioration of existing air quality, in areas having relatively clean air—those areas designated pursuant to Section 107 of the Act, as ''unclassifiable'', or ''attainment'' relative to an areas National Ambient Air Quality Standard. These areas are referred to as ''PSD areas''. The Act provides for three basic classifications applicable to PSD areas located within the United States. Associated with each classification are increments which represent the maximum allowable increase in ambient air pollutant concentrations above a baseline concentration.

Part C initially designated as Federal Class I certain areas, under Section 162(a) of the Act, such as international parks, wilderness areas, national memorial parks, and national parks.[1] The PSD regulations provide special protection for Federal Class I areas. Class II applies to areas in which pollutant increases accompanying moderate growth is allowed. Class III applies to those areas in which

[1] The 1990 CAA Amendments included provisions to allow the boundaries of existing federal Class I areas to be expanded, but no new Class I areas were created.

considerably more air quality deterioration is considered acceptable.

Under the 1977 amendments to the Act, all PSD areas, other than the Federal Class I areas, were initially designated Class II. Section 164 of the Act allows States and Indian governing bodies to reclassify areas under their jurisdiction to accommodate the social, economic, and environmental needs and desires of the local population. Reservations that have previously been reclassified as Class I areas include the Northern Cheyenne, Fort Peck, and Flathead Reservations in Montana and the Spokane Reservation in Washington.

A Class I redesignation results in lowering the allowable increases in ambient concentrations of PM, SO_2, and NO_X. Only facilities defined by the PSD regulations, 40 Code of Federal Regulations (CFR) 51.166 and 52.21, as major stationary sources or major modifications are subject to PSD and required to perform PSD air quality impact analysis. These facilities are typically large industrial sources such as refineries and electric utilities.

It is important to note that no new permits or additional controls to existing sources are required as a result of a redesignation to Class I. The difference between the two designations is that the maximum increase in ambient concentration of a given pollutant [2] allowed over a baseline concentration is lower in a Class I area. This affords a Class I area greater protection from the cumulative impacts of many facilities locating in and around the Class I area.

Forest County Potawatomi Request for Redesignation

On February 14, 1995 the FCP Tribal Council submitted to USEPA a proposal to redesignate certain FCP Reservation lands from Class II to Class I. FCP Reservation lands being requested for redesignation to Class I are limited to parcels over 80 acres, only in Forest County, and that are held in trust for the Tribe by the Federal government. With their request, the Tribal Council submitted a PSD Class I Area Redesignation Technical Report, maps identifying the reservation lands subject to the proposed redesignation, documentation of public notification, a record of the public hearing held on September 29, 1994, comments received by the Tribal Council on the proposed redesignation, and the Tribal Council's response to comments received. On June 14, 1995 the Tribal Council also provided USEPA with information concerning Air Quality Related Values (AQRV) for the proposed redesignated area, including a discussion of the economic and energy effects of a proposed AQRV for mercury. This information is available at the Crandon Public Library and Region 5 offices listed in the **ADDRESSES** section of this proposal.

Statutory and Regulatory Requirements for Redesignation

Section 164 of the Act and Federal regulations set forth at 40 CFR 52.21(g) outline the requirements for redesignation of areas under the PSD program. The Act provides that lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian Governing Body. Under section 164(b)(2) and 40 CFR 52.21(g)(5), USEPA may disapprove a redesignation only if it finds, after notice and opportunity for hearing, that the redesignation does not meet the procedural requirements of section 164 or is a mandatory Federal Class I area that may not be redesignated. The latter does not apply to the FCP area proposed for redesignation. In addition, the Indian Governing Body may resubmit the proposal after correcting any deficiencies noted by the Administrator, under 40 CFR 52.21(g)(6).

The procedural requirements for a Class I redesignation by an Indian Governing Body are as follows: (1) At least one public hearing must be conducted in accordance with the requirements set forth at 40 CFR 51.102; (2) other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation must be notified at least 30 days prior to the public hearing; (3) at least 30 days prior to the public hearing, a discussion of the reasons for the proposed redesignation including a satisfactory description and analysis of the health, environmental, economic, social and energy effects of the proposed redesignation must be prepared and made available for public inspection and the public hearing notice must contain appropriate notification of availability of such discussion; (4) prior to the issuance of the public notice for a proposed redesignation of an area that includes Federal lands in the redesignation, the redesignating authorities must provide written notice to the appropriate Federal Land Managers and an opportunity to confer and submit written comments and recommendations; and (5) prior to proposing the redesignation, the Indian Governing Body has consulted with the State(s) in which the Reservation is located and that border the Reservation.

Tribal Council Submittal

The February 14, 1995 request for redesignation includes evidence that all of the statutory and regulatory requirements for redesignation of the FCP Reservation from Class II to Class I have been met by the FCP Tribal Council. The FCP Tribal Council is the Indian Governing Body for the FCP Reservation, and only land parcels within the exterior boundaries of the Reservation are proposed for redesignation.

Pursuant to 40 CFR 51.102, the FCP Tribal Council conducted a public hearing on September 29, 1994 at the Potawatomi Tribal Hall, four miles east of Crandon, Wisconsin. Notice of the hearing was provided to the required parties, other public agencies, and interested parties. It was posted in public locations and was provided to local media. A satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation entitled, ''Forest County Potawatomi Community PSD Class I Area Redesignation Technical Report'' was completed in August 1994, and its availability was announced in the public hearing notices. Evidence that the Tribe consulted with State of Wisconsin officials prior to proposing the redesignation is also included in the submittal. Therefore, the documentation submitted by the Tribal Council shows that all statutory and regulatory procedural requirements for redesignation have been met.

Summary of Action

Because USEPA's review has not revealed any procedural deficiencies, the redesignation is hereby proposed for approval. The public is invited to comment on whether the FCP Tribal Council has met all the applicable procedural requirements of 40 CFR 52.21(g)(2) & (g)(4). Comments should be submitted to the Region 5 address listed above. USEPA will hold a public hearing on this redesignation on August 2, 1995,[3] at the Indian Springs Lodge on Highway 32 in Carter, Wisconsin, to receive additional public comment on the subject of this proposal, which is whether the proposed redesignation met the procedural requirements summarized in this action. Public comments received either at the public hearing in Carter or received in writing

[2] There are currently PSD increments established for NO_X, SO_2, and PM. 40 CFR 52.21(c).

[3] The public hearing will immediately follow an informational meeting on the PSD redesignation process, which will start at 2:00 pm CDT.

at the Region 5 offices by September 5, 1995, will be considered in the final rulemaking action taken by USEPA.

Administrative Review

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 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 a PSD Class I redesignation. Each request for redesignation shall be considered separately and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 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. sections 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 proposed action does not have a significant direct impact on small entities and may only prospectively affect the amount of air quality deterioration that is allowed from major stationary sources and major modifications, as defined by 40 CFR 52.21, and will not result in any significant additional requirements for small entities. Therefore, I certify that this action does not have a significant impact on a substantial number of small entities.

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, the 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 request for redesignation, the Tribal government has elected to adopt an option allowed them under Section 164 of the Act. The redesignation 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. However, 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.

Authority: 42 U.S.C. 7401–7671q.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Environmental Protection, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 19, 1995.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 95–16003 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[AK 9–1–6975b; FRL–5223–2]

Approval and Promulgation of State Implementation Plans: Alaska

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 Alaska for the purpose of forecasting and tracking vehicle miles traveled (VMT) in the Anchorage area. On March 24, 1994, the Alaska Department of Environmental Conservation (ADEC) submitted a SIP revision to EPA to satisfy the requirements of sections 187(a)(2)(A) and 187(a)(3) of the Clean Air Act, as amended in 1990. 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 July 31, 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 Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Montel Livingston, Air Programs Branch (AT–082), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

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

Dated: June 6, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–15955 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[OH87–1–7075b; FRL–5227–2]

Determination of Attainment of the Ozone Standard by the Cleveland, Toledo, Dayton and Cincinnati-Hamilton Interstate Ozone Nonattainment Areas and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: The USEPA is proposing to determine, through direct final procedure, that the Cleveland (which includes the Counties of Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage and Summit); Toledo (which includes the Counties of Lucas and Wood); Dayton (which includes the Counties of Clark, Greene, Miami and Montgomery); and the Ohio portion of the Cincinnati-Hamilton Interstate (which includes the Counties of Butler,

Clermont, Hamilton and Warren) ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. In the Final Rules Section of this **Federal Register**, USEPA is making these determinations without prior proposal because USEPA views this as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse or critical comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If USEPA 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 USEPA will institute a second comment period on this action only if warranted by revisions to the rulemaking based on comments received. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this action must be received by July 31, 1995.

ADDRESSES: Written comments must be mailed to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the air quality data and USEPA's analysis are available for inspection at the following address: Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Richard Schleyer, Environmental Engineer, Regulation Development Section, Air Enforcement Branch (AE–17J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5089.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the Final Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 14, 1995.

David A. Kee,

Acting Regional Administrator.

[FR Doc. 95–15960 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[UT20–3–6773b; FRL–5212–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; 1990 Base Year Carbon Monoxide Emission Inventories for Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of the 1990 base year carbon monoxide (CO) emission inventories for Ogden City, Salt Lake City, and Utah County (which includes Provo-Orem) that were submitted by the State to satisfy certain requirements of the Clean Air Act (CAA), as amended in 1990. In the Final Rules Section of this **Federal Register**, EPA is approving the State's State Implementation Plan (SIP) revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA 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. 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.

DATES: Comments on this proposed rule must be received in writing by July 31, 1995.

ADDRESSES: Written comments should be addressed to: Douglas M. Skie, Chief, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466

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

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air Programs Branch (8ART–AP), United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 293–1814.

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

Dated: May 17, 1995.

Robert L. Duprey,

Acting Regional Administrator.

[FR Doc. 95–16066 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 90, and 94

[WT Docket No. 95–70; RM–8200, FCC 95–204]

Routine Use of Signal Boosters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has released a Notice of Proposed Rule Making that proposes to permit routine use of signal boosters by licensees without separate authorization from the Commission. This action was initiated by a petition from TX RX Systems, Inc. and is necessary to enable licensees to use signal boosters without obtaining a waiver of the rules, thus reducing the workload burden on both the applicant and the Commission.

DATES: Comments must be submitted on or before July 21, 1995, and reply comments on or before August 8, 1995.

ADDRESSES: Federal Communications Commission, 1919 M Street N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0634.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making (Notice), in the Matter of Amendment of Parts 22, 90, and 94 of the Commission's Rules to Permit Routine Use of Signal Boosters, WT Docket No. 95–70, FCC 95–204, adopted May 17, 1995, and released June 22, 1995. The full text of the *Notice* is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street N.W. Washington, D.C. The complete text may be purchased from the Commission's copy contractor, ITS Inc. 2100 M St. N.W., Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rule Making

1. This proceeding was initiated by a petition for rule making filed by TX RX Systems Inc. requesting that Parts 22, 90, and 94 of the Rules and Regulations be amended to permit licensees to routinely use one-way or two-way signal

boosters without specific authorization from the Commission.

2. Currently, under Part 90 Private Land Mobile Radio Services rules, signal boosters may be used only on ten Business Radio Service frequency pairs in the 450–470 MHz band for communications related to the servicing and supplying of aircraft at certain specified airports. Under Part 22 Public Mobile Service rules, a form of signal booster, generally called a cellular repeater, may be employed by cellular licensees without separate licensing provided that the repeater does not extend the licensee's signal beyond the authorized cellular service area.

3. The Notice proposes to expand the use of signal boosters to Part 22 common carrier paging operations at 931–932 MHz, to Part 90 land mobile radio operations in all Part 90 frequency bands above 150 MHz, to Part 90 paging operations at 929–930 MHz, and to Part 94 multiple address system operations in the 928–960 MHz band.

4. Additionally, the Notice proposes to define and classify signal boosters as narrowband (Class A) or broadband (Class B), limit booster transmitter output power to 500 milliwatts, permit licensees to use signal boosters without separate authorization, and make licensees responsible for correcting any interference caused by the use of signal boosters.

Ex-Parte

5. This is a non-restricted notice and comment rule making proceeding. See Section 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Initial Regulatory Flexibility Analysis

6. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act.

Paperwork Reduction

7. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed upon the public.

List of Subjects in 47 CFR Parts 22, 90, 94

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Parts 22, 90, and 94 of chapter I of title 47 of the Code of Federal Regulations are proposed to be amended as follows:

PART 22—PUBLIC MOBILE SERVICE

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

Auhority: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 22.99 is amended by adding the definition for ''signal booster'' in alphabetical order to read as follows:

§ 22.99 Definitions.

* * * * *

Signal booster. A stationary device that automatically reradiates signals from base transmitters without channel translation, for the purpose of providing service in weak signal areas.

* * * * *

3. Section 22.377 is amended by revising the first sentence of the introductory text to read as follows:

§ 22.377 Type-acceptance of transmitters.

Except as provided in paragraph (b) of this section, transmitters used in the Public Mobile Services, including those used with signal boosters, in-building radiation systems and cellular repeaters must be type-accepted for use in the radio services regulated under this part. * * *

* * * * *

4. A new § 22.385 is added to read as follows:

§ 22.385 Signal boosters.

Licensees may install and operate signal boosters without applying for authorization or notifying the Commission, subject to the requirements of this section.

(a) The location of each signal booster must be within the protected service area of the licensee's authorized base transmitter(s) on the channel being reradiated.

(b) Any signal booster used must be designed such that transmitter output power cannot exceed 500 milliwatts under any normal operating condition.

(c) Licensees must not allow any signal booster that they install and operate to cause interference to the service or operation of any other authorized stations and systems.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Section 4, 303, and 332, 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.7 is amended by revising the definition for ''signal booster'' to read as follows:

§ 90.7 Definitions.

* * * * *

Signal booster. A device which automatically receives. amplifies, and retransmits on a one-way or two-way basis, the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorize bandwidth. A signal booster may be either narrowband (Class A), in which case the booster amplifies only those discrete frequencies intended to be retransmitted, or broadband (Class B), in which case all signals within the passband of the signal booster filter are amplified.

* * * * *

3. Section 90.75 is amended by revising the introductory text of (c)(25) and paragraphs (c)(25)(i) through (iii), removing paragraphs (c)(25)(iv), (v), (vi), and (vii), and redesignating paragraph (c)(25)(viii) as (c)(25)(iv), to read as follows:

§ 90.75 Business radio service.

* * * * *

(c) * * *

(25) This frequency is available for assignment as follows:

(i) To persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged, for stations located on or near the airports listed in paragraph (c)(25)(iv) of this section. Stations will be authorized on a primary basis and may be used only in connection with the servicing and supplying of aircraft.

(ii) To stations in the Business Radio Service for secondary use at locations 80 km (50 mi) or more from the coordinates of the listed airports at a maximum ERP of 300 watts.

(iii) To stations in the Business Radio Service for secondary use at locations 16 km (10 mi) or more from the coordinates of the listed airports at a maximum transmitter output power of 2 watts. Use of the frequency is restricted to the confines of an industrial complex or manufacturing yard area. Stations licensed prior to April 17, 1986 may continue to operate with facilities authorized as of that date.

* * * * *

4. A new § 90.219 is added to read as follows:

§ 90.219 Use of signal boosters.

Licensees authorized to operate radio systems in the frequency bands above 150 MHz may employ signal boosters in accordance with the following criteria:

(a) The amplified signal is retransmitted only on the exact frequency(ies) of the originating base, fixed, mobile, or portable station(s). The booster will fill in only weak signal areas and cannot extend the system's signal coverage area.

(b) The booster must be equipped with automatic gain control circuitry which will limit the total output power of the unit to a maximum of 500 milliwatts under all conditions. Per channel output power on broadband (Class B) units is the total output power (500 mw) divided by the number of channels amplified. All equipment must meet the out-of-band emmission limits of § 90.209.

(c) Boosters must be installed with sufficient isolation between receiving and retransmitting circuits to prevent oscillation.

(d) The licensee is given authority to operate signal boosters without separate authorization from the Commission. Type-accepted equipment must be employed and the licensee must ensure that all applicable rule requirements are met.

(e) Licensees employing Class B signal boosters as defined in § 90.7 are responsible for correcting any harmful interference that the equipment may cause to other systems.

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended, 1066, 1082: 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.3 is amended by adding the definition for ''signal booster'' in alphabetical order to read as follows:

§ 94.3 Definitions.

* * * * *

Signal booster. A device which automatically receives, amplifies, and retransmits on a one-way or two-way basis, the signals received from base, fixed, mobile, and portable stations, with no change in frequency or authorized bandwidth. A signal booster may be either narrowband (Class A), in which case the booster amplifies only those discrete frequencies intended to retransmitted, or broadband (Class B), in which case all signals within the passband of the signal booster filter are amplified.

* * * * *

3. Section 94.95 is added to read as follows:

§ 94.95 Use of signal boosters.

Licensees authorized to operate multiple address systems in the 928–929/952–960 MHz and 932–932.5/941–941.5 MHz bands may employ signal boosters in accordance with the following criteria:

(a) The amplified signal is retransmitted only on the exact frequency of the originating master or remote station. The booster will fill in only weak signal areas and cannot extend the system's signal coverage area.

(b) The booster must be equipped with automatic gain control circuitry which will limit the total output of the booster to 500 milliwatts under all conditions. Boosters must meet the out-of-band emmission limits of § 94.71.

(c) Boosters will be installed with sufficient isolation between receiving and retransmitting circuits to prevent oscillation.

(d) The licensee is given authority to use signal boosters without separate authorization from the Commission. Type-accepted equipment must be employed and the licensee must ensure that all applicable rule requirements are met.

(e) Licensees employing Class B signal boosters as defined in § 94.3 are responsible for correcting any harmful interference that the signal booster may cause to other systems.

[FR Doc. 95–15673 Filed 6–28–95; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition to List the Queen Charlotte Goshawk as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 12-month finding for a petition to list the Queen Charlotte goshawk (*Accipiter gentilis laingi*) under the Endangered Species Act, as amended. After a review of all available scientific information the Service find that listing this species is not warranted at this time.

DATES: The finding announced in this document was made on May 19, 1995.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the U.S. Fish and Wildlife Service, 3000 Vintage Blvd., Suite 201, Juneau, Alaska 99801. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John Lindell, Endangered Species Biologist, Ecological Services (see **ADDRESSES** section) (907/586–7240).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding within 12 months of the date of the receipt of a valid petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

On November 21, 1991, the Service published in the **Federal Register** (56 FR 58804) a notice of review for an updated list of animal taxa that are being reviewed for possible addition to the List of Endangered and Threatened Wildlife. Among the species included as Category 2 candidates was the northern goshawk (*Accipiter gentilis*). By inclusion as a subspecies, the Queen Charlotte goshawk was also designated a Category 2 species at that time.

On May 9, 1994, the Service received a petition dated May 2, 1994, from the Southwest Center for Biological Diversity, the Greater Gila Biodiversity Project, the Biodiversity Legal Foundation, Greater Ecosystem Alliance, Save the West, Save America's Forests, Native Forest Network, Native Forest Council, Eric Holle, and Don Muller to list the Queen Charlotte goshawk (*Accipiter gentilis laingi*) as endangered pursuant to the Endangered Species Act. On August 26, 1994, (59 FR 44124) the Service announced a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted and opened a comment period until November 25, 1994. On January 4, 1995, (60 FR 425) the Service extended the comment period until February 9, 1995. On February 24, 1995 (60 FR 10344) the Service extended the comment period until February 28, 1995.

The Service has reviewed the petition, the literature cited in the petition, and other literature and information available in the Service's files, and contacted persons knowledgeable about this species. On the basis of the best scientific and commercial information available, the Service findings the petition is not warranted at this time.

In the 90-day finding the Service recognized the petitioners' concerns for the long-term survival of the Queen Charlotte goshawk. The Service continues to share those concerns. The U.S. Forest Service is evaluating its land management practices through the development of interim management guidelines to maintain viable populations of native wildlife, and considering long-term management actions through revision of the Tongass National Forest Land and Resource Management Plan. The Service believes there is opportunity to manage for the long-term viability of the goshawk through the implementation of these guidelines and the management plan. However, it is clear that without significant changes to the existing Tongass National Forest Land and Resource Management Plan, the long-term viability of the Queen Charlotte goshawk may be seriously imperiled. The Queen Charlotte goshawk will therefore be retained on the Service's list as a Category 2 candidate species. If additional data become available, the Service may reassess the need to list this species.

Author

The primary author of this document is John Lindell, Endangered Species Biologist, Ecological Services (see **ADDRESSES** section) (telephone 907/586–7240).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: May 19, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–15975 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To List the Southern Torrent Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The Fish and Wildlife Service (Service) announces a 90-day finding on a petition to list the southern torrent salamander (*Rhyacotriton variegatus*), under the Endangered Species Act of 1973, as amended. The Service finds that the petition presented substantial information indicating that listing this species may be warranted. The Service initiates a status review and will prepare a 12-month finding.

DATES: The finding announced in this document was made on June 7, 1995. The Service will consider all comments received by July 31, 1995 in the status review and 12-month finding for this species.

ADDRESSES: Questions, comments, or information concerning this petition should be submitted to the U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California, 95825–1846. The petition, petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Crisney, staff biologist, at the above address or telephone 916–979–2725.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. A finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, a finding is to be made within 90 days of the date the petition was received, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is required to commence a review of the status of the species involved if one has not already been initiated under the Service's internal candidate assessment process.

The Service has made a 90-day finding on a petition to list the southern torrent salamander (*Rhyacotriton variegatus*). On May 31, 1994, the Service received a letter from Stephan C. Volker, attorney for the Environmental Protection Information Center, Northcoast Environmental Center, Oregon Natural Resources Council, California Wilderness Coalition, Friends of the River, South Fork Mountain Defense Committee, Mendocino Environmental Center, Sierra Club, California Sportfishing Protection Alliance, Willits Environmental Center, and Ancient Forest Defense Fund, to list the southern torrent salamander as a threatened species. The letter was dated May 24, 1994, and clearly identified the above mentioned parties as co-petitioners of a petition dated May 23, 1994, authored by John M. Gaffin of the Environmental Protection Information Center, Inc. The petition contained the name, signature, institutional affiliation, and address of the primary petitioner.

The southern torrent salamander has been identified as a species (Good and Wake 1992) that is distinct from the Olympic salamander (*Rhyacotriton olympicus*), and the original sub-species designation of *Rhyacotriton olympicus variegatus* is no longer applicable. The Service is using the species' common name, southern torrent salamander, in accord with Good and Wake (1992), and is not using the former sub-species common name, southern seep salamander, as identified in the petition.

The petitioners requested that the Service list the southern torrent salamander as threatened throughout its range. Historically, the southern torrent salamander has been described as occurring from Tillamook County, Oregon, south along the coast range into northwestern California including Del Norte, Humboldt, Siskiyou, Trinity, and Mendocino counties. The species resides in headwaters habitat of conifer-dominated mature and old-growth forests, and has restrictive habitat requirements. It inhabits mossy seeps of headwaters or the moss-covered rocky substrate (Corn and Bury 1989) of first and second order streams up to 1,200 feet in elevation (Nussbaum *et al.* 1983). They have a low thermal range of 5.8 to 12.0 °C (42 to 53 °F) (Brattstrom 1963, Nussbaum *et al.* 1983), are highly sensitive to desiccation (Ray 1958), and are aquatic obligates. They are probably communal nesters (Nussbaum 1969), and produce few eggs per year (8.4 to 10.0) (Nussbaum *et al.* 1983). The petitioners assert that these characteristics minimize the ability of southern torrent salamander populations to recover from radical habitat alterations.

The petitioners have concerns about localized extinction as a result of continued timber harvest, habitat degradation and fragmentation, and genetic isolation. Although the species appears to be present throughout its historical range, there is evidence of localized population suppression and extirpation in the short-term due to past

forest management activities. The petitioners are concerned that 90 percent of the total range of the southern torrent salamander has undergone rapid and large-scale harvesting of timber or is harvestable, and that there is a lack of protection for the species on those lands, which may place the viability of the species at risk.

The Service has reviewed information in Service files, the petition, and material referenced in the petition. On the basis of the best scientific and commercial information available regarding the present and future threats facing the petitioned species, the Service finds there is substantial information indicating that the listing of the southern torrent salamander may be warranted. This notice initiates a status review for the southern torrent salamander. The Service solicits any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry or any other interested party concerning the status of this species. Within 1 year from the date the petition was received, a finding will be made as to whether listing the southern torrent salamander is warranted, as required by section 4(b)(3)(B) of the Act.

Literature Cited

Brattstrom, Baynard H. 1963. A preliminary review of the thermal requirements of amphibians. Ecology 44:238–255.

Corn, Paul Stephen and R. Bruce Bury 1989. Logging in western Oregon: Responses of headwater habitats and stream amphibians. Forest Ecology and Management 29:39–57.

Good, David A. and David B. Wake. 1992. Geographic variation and speciation in the torrent salamanders of the genus *Rhyacotriton* (Caudata: Rhyacotritonidae). University of California Press. Berkeley. 89 pp.

Nussbaum, R.A. 1969. A nest site of the Olympic salamander, *Rhyacotriton olympicus* (Gaige). Herpetologica 25(4):277–278.

Nussbaum et al. 1983. Amphibians and reptiles of the Pacific Northwest. University of Idaho Press. Moscow, Idaho, 332 pp.

Ray, Carlton. 1958. Vital limits and rates of desiccation in salamanders. Ecology. 39:75–83.

Author

This notice was prepared by Alison Willy (Sacramento Field Office) (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*)

Dated: June 7, 1995.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 95–16005 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 60, No. 125

Thursday, June 29, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Alternative Agricultural Research and Commercialization (AARC) Center; AARC Center Request for Proposals

AGENCY: Alternative Agricultural Research and Commercialization (AARC) Center, USDA.

ACTION: AARC Center request for proposals.

Program Description

Purpose

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting proposals to use agricultural (traditional and new crops, animal by-products or forestry) materials in industrial products or processes. The authority for the Program is contained in sections 1660 and 1661 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. No. 101–624, 7 U.S.C. 5904. Potential funding for proposals to provide commercialization assistance to private companies using the Cooperative Agreements Program (Program) to assist emerging industrial products/processes involving the use of agricultural materials in non-food, non-feed, non-traditional fiber products or processes. The Board of Directors reserves the right to use only certain types of authorized assistance. Successful projects are expected to repay the AARC Center Revolving Fund through negotiated arrangements. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture.

The objectives of the AARC Center are:

* To search for new non-food, non-feed, non-traditional fiber products that may be produced from agricultural commodities and for processes to produce such products.
* To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
* To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
* To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive cooperative agreements to support primarily pre-commercialization or commercialization tasks, including marketing for the development of new industrial products or processes derived from agricultural or forestry materials. All other things equal, the nearer to commercialization a product or process is the higher the likelihood of funding by the AARC Center.

The AARC Center will accept either pre-proposals or full proposals. Pre-proposals will be evaluated to determine if an idea has sufficient merit to warrant a full proposal including if it meets the AARC Center's mission, and to provide suggestions for improvement. Full proposals will require more time to complete and will be evaluated to determine if they warrant funding. The AARC Center may ask applicants submitting either pre-proposals or full proposals to make an oral presentation. All proposals will be evaluated by external reviewers, as well as by the AARC Center staff, before the proposals (along with review comments) are provided to the Board of Directors. The Board makes final funding decisions.

Available Funding

This request for proposals is being announced subject to funding from Congress for Fiscal Year 1996. The Administration's budget request to Congress was $8 million for the AARC Center.

The AARC Center Board expects applicants to, at minimum, match the dollars requested from the AARC Center. A preference may be given to projects for which the ratio of AARC Center funds to non-Center funds would be the lowest.

Eligibility

Proposals are invited from any private firm, individual, public or private educational institution or organization, Federal agency, cooperative, or non-profit organization. Cooperative projects involving combinations of the above organizations, especially with private sector leadership, are strongly encouraged. Since this is basically a program to commercialize new products, and since repayment is expected, it is much more likely that awards will be given to private firms. Small business entrepreneurs are preferred. The private sector partner must take the lead when an educational institution is involved.

Program Emphasis

As determined by the AARC Center Board from a series of public hearings, Congressional Hearings, workshops, and experience from the initial two rounds of proposals, each proposal should focus on products/processes using at least one of the following agricultural or forestry material categories:

Starch/Carbohydrates
Fats and Oils
Fibers
Forest Materials
Animal By-Products
Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, etc

The AARC Center Board has approved funding for about 40 projects using 1993 and 1994 appropriated funds. Another 14 projects are currently under consideration for funding with 1995 appropriations. Projects include use of a broad range of agricultural and forestry materials such as: Soybean oil, soybean meal cotton lint, peanut hulls, corn husks, wheat straw, milkweed, kenaf, castor oil, rapeseed, cuphea, crambe, ethanol, mesquite, hesperaloe, lesquerella, agricultural and forestry wastes, biomass, and plant proteins. Examples of products include: biocontrol agents, medium-density fiberboard and building materials from straw, plypole, food packaging, bonded paper from kenaf, oil absorbents, fillers and yarn, spinning fibers, highway signposts and railroad ties, building and furniture composites, heating and electricity, potting mixes, biodiesel—as

replacement for petroleum, biodegradable lubricants, coatings cosmetics, detergents, personal care products, compost, carrier for crop protection materials, and cat litter.

Evaluation Criteria

The AARC Center's primary interest, in this request for pre-proposals/proposals, is in providing assistance in pre-commercial activities to move new industrial products from agricultural and forestry materials into the marketplace. The AARC Center Board seeks projects that will have market impact. This includes expanding use of agricultural or forestry materials in industrial products especially those that expand markets for farmers, create jobs, spur rural development, provide environmental and/or conservation benefits, and improve trade. Emphasis will be given to those proposals whose products are closest to commercialization and have positive impact on rural employment and economic activity.

Proposals and pre-proposals will be evaluated on four primary criteria: management team capability, business and marketing soundness, technical factors, and expected time and magnitude of impacts if successful. Examples of types of information that will enter the decision process on each of the primary categories of criteria include:

Management:
- Capability of the management team
- Amount of matching funds (cash) committed
- Awareness of the financial resources needed to successfully market the product
- Clear identification of project milestones
- Private sector leadership to commercialize the product or process

Business:
- Potential profitability
- Clear Identification of customers
- Structure of the market in terms of size, number, leading competitors, and reaction of competitors to a new product
- Amount and nature of the value added to the agricultural or forestry material
- Ability to replicate in other parts of the country
- Key issues and government policies or regulations that might impact success
- Applicant's ability and willingness to repay the AARC Center for the risk investment made by the American taxpayers

Technical:
- Relation to previous work
- Technical requirements of the product—industry standards or guidelines
- Technical and market testing needed
- Government approvals or permits required
- Major technical hindrances
- Innovative techniques and patents
- Ability to achieve technical claims
- Present stage of development

Impacts:
- Volume of agricultural or forestry material used
- Number and quality of jobs (especially in distressed rural areas) expected to be created—type, rural/urban, timeframe
- Potential positive and negative environmental impacts from production to consumer disposal of product
- Proposed product's implications for helping improve farm income, especially the family farm
- Resource conservation effects such as replacement of stock resources, crop diversification, soil erosion, water use, etc
- Estimated impact on export/import trade balance, commodity support programs and rural economic activity

Other Considerations

With respect to projects carried out with private researchers or commercial companies, the enabling legislation provides that information submitted by applicants incident thereto will be kept confidential. Project information including applications is specifically excluded from release under the Freedom of Information Act, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order. However, the information will be reviewed by three reviewers who will be held to confidentiality. Board members are required to exclude themselves from consideration of a proposal where a conflict of interest exists.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated as part of the agreement. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR 401.

No agreement may be entered into under the program for the acquisition or construction of a building or facility.

All applicants must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to or simultaneous with the submission.

Due to limited funds, the AARC Center may not be able to fund all projects meriting support, and awards will be based on merit using the review evaluations and the Board's judgement.

Applicants who submitted a proposal or pre-proposal previously must reapply to be considered for Fiscal Year 1996 funding.

Future Proposals

In the future and until further notice, the AARC Center Board will accept proposals or pre-proposals at any time on AARC Center forms. The Board will meet at least twice a year to select proposals for funding.

Submissions

To be eligible for this round of AARC Center Board decisions, both pre-proposals and full proposals must be received at the AARC Center office by October 1, 1995. One of the following addresses should be used, as applicable:

Regular U.S. Mail

USDA AARC Center, AG Box 0401, 14th & Independence Ave. SW., 0156 South Building, Washington, DC 20250–0401.

Overnight Delivery

USDA AARC Center, 0156 South Building, 14th & Independence Ave., Washington, DC 20250–0401 Tel: 202–690–1633.

For More Information

Proposals must be submitted on forms provided by the AARC Center—either pre-proposals or full proposals. Contact the AARC Center by letter using the addresses above or fax number 202–690–1655 to receive a packet containing the instructions and forms. Specific questions should be directed to Patricia Dunn: Phone 202–690–1634.

Done at Washington, DC, on June 23, 1995.

W. Bruce Crain,

Director, AARC Center.

[FR Doc. 95–15911 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–2B–M

Agricultural Research Service

Notice of Intent to Grant an Exclusive Patent License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of Intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture,

Agricultural Research Service, intends to grant to Cell Applications, Inc., San Diego, California, an exclusive domestic license, in specific Fields of Use, for U.S. Patent Application Serial No. 08/133,589, ''Hepatocyte Cell Derived from the Epiblast of Pig Blastocysts,'' filed October 8, 1993.

DATES: Comments must be received on or before August 28, 1995.

ADDRESSES: Send comments to: USDA–ARS–Office of Technology Transfer, Baltimore Boulevard, Building 005, room 419, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: W.J. Phelps, of the Office of Technology Transfer, at the Beltsville address given above; telephone: 301–504–6532.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as said company has submitted a complete and sufficient application for a license, promising therein to bring the benefits of said invention to the U.S. public.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 USC 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 95–15946 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–03–M

Natural Resources Conservation Service

Box Creek Watershed, Mississippi; Notice

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize federal funding for the Box Creek Watershed project, Holmes County, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: A determination has been made by Homer L. Wilkes that the proposed works of improvement for the Box Creek Watershed project will not be installed. the sponsoring local organizations have concurred in this determination and agree that federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Homer L. Wilkes, State Conservationist, at the address and telephone number previously shown.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable.)

Homer L. Wilkes,

State Conservationist.

[FR Doc. 95–15912 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–16–M

Houlka Creek Watershed, Mississippi

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to deauthorize federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the Houlka Creek Watershed project, Clay, Chickasaw, and Pontotoc Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, telephone 601–965–5205.

SUPPLEMENTARY INFORMATION: A determination has been made by Homer L. Wilkes that the proposed works of improvement for the Houlka Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Homer L. Wilkes, State Conservationist, at the address and telephone number previously shown.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding state and local clearinghouse review of Federal and federal assisted programs and projects is applicable.)

Dated: June 21, 1995.

Homer L. Wilkes,

State Conservationist.

[FR Doc. 95–15913 Filed 6–28–95; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Survey of Pollution Abatement Costs and Expenditures, Annual Capital Expenditures Survey–Supplement for Pollution Abatement.

Form Number(s): MA–200, PA–2.

Agency Approval Number: 0607–0176.

Type of Request: Revision of a currently approved collection.

Burden: 44,375 hours.

Number of Respondents: 17,750.

Avg Hours Per Response: 2.5 hours.

Needs and Uses: The Census Bureau uses Forms MA–200 (Survey of Pollution Abatement Costs and Expenditures) and PA–2 (Annual Capital Expenditures Survey – Supplement for Pollution Abatement) to measure private industry's cost to meet increasing Federal, state, and local regulations for controlling pollution. We use the MA–200 to collect data on capital expenditures and operating costs for pollution abatement in manufacturing plants; the PA–2 is for nonmanufacturing plants. The data from these forms are an essential source for monitoring the impact of environmental programs on the U.S. economy and the responsiveness to these programs. The most significant revision being made to this collection is that the PA–2 is now

a supplement to the Annual Capital Expenditures Survey instead of the discontinued Plant and Equipment Expenditures Survey. Some changes have been made to instructions for both forms based on requests from respondents. Additionally, one check box was added to one question at the request of the Environmental Protection Agency.

Affected Public: Business or other for–profit.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–16050 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

Form Number(s): BE–22.

Agency Approval Number: 0608–0060.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 16,100 hours.

Number of Respondents: 1,400.

Avg Hours Per Response: 11.5 hours.

Needs and Uses: This survey will obtain sample data on transactions in selected services between U.S. and unaffiliated foreign persons. The data from the survey will update the data collected in the quinquennial BE–20 benchmark survey of such services. The information gathered is needed to support U.S. trade policy initiatives, including trade negotiations, and to compile the U.S. balance of payments and the national income and product accounts.

Affected Public: Businesses or other for–profit institutions, not–for profit institutions, state and local governments, or other institutions engaging in international transactions in the covered services.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, Room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–15902 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–CW–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1995 Census of Agriculture Test.

Form Number(s): 95–A01(X), 95–A02(X), 95–A03(X), 95–A04(X).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,880 hours.

Number of Respondents: 8,200.

Avg Hours Per Response: 1 hour and 5 minutes.

Needs and Uses: The Census Bureau will conduct a 5–year census of agriculture in 1997. The agricultural census is the primary source of state and county benchmark data for the agricultural sector of the economy. This 1995 Test will evaluate factors affecting response including format and design of the instrument, new content items, changes to question wording, respondent burden, attitudes affecting response, selected procedural changes, and changes respondents might make during the testing program. The most significant items to be tested are the redesign of the form in a ''user–friendly'' format, a wording reduction to the land ownership questions, and the order of sections. Four forms having varying content and format will be tested. The forms will be mailed to a national sample of farms. A sub–sample of those farms will be selected for a probing telephone revinterview.

Affected Public: Farms.

Frequency: One–time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–15903 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Company Organization Survey.

Form Number(s): NC-9901.

Agency Approval Number: 0607-0444.

Type of Request: Revision of a currently approved collection.

Burden: 169,589 hours.

Number of Respondents: 115,000.

Avg Hours Per Response: 1 hour and 28 minutes.

Needs and Uses: The Census Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of all employer organizations and their establishments and contains such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of

statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi-establishment companies that are summarized and published in the annual County Business Patterns series of reports. In this request for revision, we are adding a one-time data user survey to selected respondent mailings to collect information on the respondents' ability and interest in reporting data electronically in subsequent years. We are also deleting an item from the COS report form which collected data on health plans.

Affected Public: Businesses or other for-profit organizations, not for-profit institutions.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Gerald Taché, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: June 22, 1995.

Gerald Taché,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 95–15904 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–07–F

International Trade Administration

[A–475–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from Italy; Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On February 28, 1995, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof (AFBs) from Italy (60 FR 10959). On May 11, 1995, the Court of International Trade (CIT) ordered the Department to correct two ministerial errors in the final results with respect to AFBs from Italy sold by Meter. Accordingly, we are amending our final results of administrative review with respect to Meter. The review covers the period May 1, 1992, through April 30, 1993. The ''class or kind'' of merchandise covered by the review of Meter is ball bearings and parts thereof (BBs).

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Michael Rill, Office of Antidumping Compliance, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1995, the Department published the final results of antidumping duty administrative review and revocation in part of the antidumping duty orders on AFBs from Italy (60 FR 10959). The review period is May 1, 1992, through April 30, 1993. The review covered one class or kind of merchandise, BBs, from Italy sold by Meter S.p.A. For a detailed description of the products covered under this class or kind of merchandise, including a compilation of all pertinent scope determinations, see the ''Scope Appendix'' of the final results referenced above.

Meter challenged the final results before the CIT, alleging ministerial errors in the final results for AFBs from Italy. On May 11, 1995, the CIT ordered the Department to correct the errors and publish the amended final results in the **Federal Register**.

Amended Final Results of Review

The CIT ordered the Department to make the following corrections to its analysis for Meter: (1) Calculate the cost of manufacturing by applying the computed adjustment percentage only to variable overhead costs, and (2) calculate Meter's general and administrative expense by removing the adjustment for severance costs. We have corrected these ministerial errors in Meter's margin calculation for the period May 1, 1992, through April 30, 1993.

Based on the correction of these ministerial errors in our calculations for Meter, we have determined that the following weighted-average percentage margin exists for the period May 1, 1992, through April 30, 1993:

Manufacturer/Exporter	Country	BBs
Meter	Italy	2.62

Based on these results, the Department will instruct the Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of these reviews. These deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a 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 the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping occurred and the subsequent assessment of double antidumping duties.

This amendment of final results of review and notice are in accordance with section 751(f) of the Tariff Act (19 U.S.C. 1673(d)) and 19 CFR 353.28(c).

Dated: June 23, 1995.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 95–16048 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–501]

Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Countervailing Duty Administrative Review

June 21, 1995.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On March 28, 1995, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (60 FR 15901). We have now completed this review and determine the total net subsidy rate to be 0.73 percent *ad valorem* for all

companies for the period January 1, 1992 through December 31, 1992. We will instruct the U.S. Customs Service to assess countervailing duties as indicated above.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Penelope Naas or Carole Showers, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3534 and 482–3217, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1995, the Department published in the **Federal Register** (60 FR 15901) the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751; August 14, 1985). The Department is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Unless otherwise indicated, all citations to the statute and to the Department's regulations are in reference to the provisions as they existed on December 31, 1994.

We invited interested parties to comment on the preliminary results. On April 27, 1995, a case brief was submitted by the domestic interested parties. On May 4, 1995, a rebuttal brief was submitted by the Royal Thai Government. The review period is January 1, 1992 through December 31, 1992. This review involves one company, Saha Thai Pipe and Tube, and the following programs:

1. Export Packing Credits
2. Tax Certificates for Exporters
3. Tax and Duty Exemptions Under Section 28 of the Investment Promotion Act
4. Repurchase of Industrial Bills
5. Export Processing Zones
6. International Trade Promotion Fund/ Export Promotion Fund
7. Electricity Discounts for Exporters
8. Reduced Business Taxes for Producers of Intermediate Goods for Export Industries
9. Additional Incentives under the IPA

We have now completed this review in accordance with section 751 of the Act. We have made no calculation changes since the preliminary determination. Therefore, we determine that the net subsidy for these final results is the same as in the preliminary determination (60 FR 15091): 0.73 percent *ad valorem* for all exporters and producers of pipe and tube from Thailand.

Scope of Review

Imports covered in this review are shipments of circular welded carbon steel pipes and tubes (pipes and tubes) with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A–120, A–53 and A–135. During the review period, this merchandise was classified under item numbers 7306.30.10 and 7306.30.50 of the HTS. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments

Comment 1

Petitioners challenge the Department's decision to publish a country-wide countervailing duty rate. They argue that the statute, legislative history and court precedent give the Department ample authority to calculate a company-specific rate and a separate ''all others'' rate in the final results of this review. In this case, petitioners argue that the Department does not have a representative sample, since other producers are known to export the subject merchandise to the United States. Petitioners state that section 355.22(d) does not control the results in this review, as the country-wide rate must bear some relation to the average rate for all producers in the country. Thus, the Department should issue a company-specific rate to Saha Thai and an all-others rate to the remaining companies.

Respondents state that section 355.22(d) requires the publication of a single, country-wide rate in this review. Respondents point to the regulations, which state that only if there is a significant differential between producers or exporters during the period under review would the Department issue individual rates. They claim that petitioners' argument, which would require the Department to use the preliminary results of the 1988 review as the basis for an ''all other '' rate, is not allowed by the statute or the regulations because these results are outside the period under review.

DOC Position

We agree with respondents. At verification, we verified that Saha Thai was the only company that exported the subject merchandise during the period of review (see Verification of the Government of Thailand and Saha Thai, dated May 26, 1994). Thus, based on 355.22(c)(7)(ii), we calculated a country-wide rate. The fact that a producer did not export during the POR, but now exports, will be addressed in a subsequent administrative review if one is requested, and the appropriate rate then will be determined.

Results of Review

As a result of our review, we determine the net subsidy for the period of January 1, 1992, through December 31, 1992, to be 0.73 percent *ad valorem* for all exporters and producers of pipe and tube from Thailand.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 0.73 percent *ad valorem* on the f.o.b. invoice price on all shipments of this merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after January 1, 1992, and on or before December 31, 1992.

Further, the Department intends to instruct the Customs Service to collect cash deposits of 0.73 percent *ad valorem* on the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from the warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit instruction shall remain in effect until publication of the final results of the next administrative review.

The administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: June 21, 1995.

Susan G. Esserman

Assistant Secretary for Import Administration.

[FR Doc. 95–16049 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–DS–P

Intent to Revoke Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce (the Department) is notifying the public of its intent to revoke the countervailing duty order listed below. Domestic interested parties who object to revocation of this order must submit their comments in writing not later than the last day of July 1995.

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Cameron Cardozo, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by the Department's regulations (at 19 CFR 355.25(d)(4)), we are notifying the public of our intent to revoke the countervailing duty order listed below, for which the Department has not received a request to conduct an administrative review for the most recent four consecutive annual anniversary months.

In accordance with section 355.25(d)(4)(iii) of the Department's regulations, if no domestic interested party (as defined in sections 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the regulations) objects to the Department's intent to revoke this order pursuant to this notice, and no interested party (as defined in section 355.2(i) of the regulations) requests an administrative review in accordance with the Department's notice of opportunity to request administrative review, we shall conclude that the countervailing duty order is no longer of interest to interested parties and proceed with the revocation. However, if an interested party does request an administrative review in accordance with the Department's notice of opportunity to request administrative review, or a domestic interested party does object to the Department's intent to revoke pursuant to this notice, the Department will not revoke the order.

Countervailing Duty Orders

EC: Sugar (C–408–046)—07/31/78, 43 FR 33237

Opportunity to Object

Not later than the last day of July 1995, domestic interested parties may object to the Department's intent to revoke this countervailing duty order. Any submission objecting to the revocation must contain the name and case number of the order and a statement that explains how the objecting party qualifies as a domestic interested party under sections 355.2(i)(3), (i)(4), (i)(5), or (i)(6) of the Department's regulations.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: June 19, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 95–16047 Filed 6–28–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Corps of Engineers

Notice of Availability of Surplus Land and Buildings in Accordance with Public Law 103–421 Located in Hamilton Army Airfield, Novato, California

AGENCY: Corps of Engineers, DOD.

ACTION: Public notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Sacramento District, on behalf of the Department of the Army announces the availability of surplus land and buildings to the homeless in accordance with Public Law 103–421 located at Hamilton Army Airfield, Novato, California. The area available consists of approximately 667 acres of land and 23 storage type buildings. A former airfield which lies below sea level has potential flooding and access problems once Department of Defense vacates the base and the levees/pumps are inoperable. The buildings are all in various stages of disrepair and contain the presence of asbestos. Any homeless organization interested in acquiring land and/or buildings should contact Ms. Margit Allen, representing the Hamilton Reuse Planning Authority, 14725 Alton Parkway, P.O. Box 57057, Irvine, CA 92619–7057. The opportunity to apply under the provisions of this notice will terminate on September 15, 1995.

FOR FURTHER INFORMATION CONTACT: Ms. Margit Allen at the above address.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15915 Filed 6–28–95; 8:45 am]

BILLING CODE 3710–GH–M

Inland Waterways Users Board

AGENCY: Corps of Engineers, DOD.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463) announcement is made of the next meeting of the Inland Waterways Users Board. The meeting will be held on July 26, 1995 at the Red Lion Inn at the Quay, 100 Columbia Street, Vancouver, Washington 98660 (Tel. 206–694–8341). Registration will begin at 8:30 AM and the meeting is scheduled to adjourn at 4:30 PM. The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, Washington, DC 20314–1000.

SUPPLEMENTARY INFORMATION: Review and approval of the 1995 Annual Report of the Inland Waterways Users Board is a scheduled agenda item.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 95–15914 Filed 6–28–95; 8:45 am]

BILLING CODE 3719–92–M

Department of the Navy

Community Redevelopment Authority and Available Surplus Buildings and Land at Military Installations Designated for Closure: Naval Station, Philadelphia, PA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: This Notice provides information regarding: (a) the redevelopment authority established to plan the reuse of the Naval Station, Philadelphia, PA; (b) the surplus property that is located at that base closure site; and (c) the timely election by the redevelopment authority to proceed under the Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421 (''the Act''). This surplus designation applies only to the Naval Station property and does not pertain to the Naval Shipyard, Philadelphia, PA.

FOR FURTHER INFORMATION CONTACT: John J. Kane, Director, Real Estate Operations Division, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300, telephone (703) 325–0474, or Marian E. DiGiamarino, Special Assistant for Real Estate, Base Closure Team, Northern Division, Naval Facilities Engineering Command, 10 Industrial Highway, Mail Stop #82, Lester, PA 19113–2090, telephone (610) 595–0762. For detailed

information regarding particular properties identified in this Notice (i.e., acreage, floor plans, sanitary facilities, exact street address, etc.), contact Lieutenant Todd Hendricks, Staff Civil Engineer, Naval Station, Philadelphia, PA 19112, telephone (215) 897–5214/5217.

SUPPLEMENTARY INFORMATION: In 1991, the Naval Station, Philadelphia, PA, was designated for closure pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. By this Notice, the land and facilities described below are declared surplus to the needs of the Federal government and available for use by: (a) State and local governments and other interested parties pursuant to various statutes which authorize conveyance of surplus properties, and (b) homeless providers pursuant to the Act.

Election to Proceed Under New Statutory Procedures

The Act was signed into law on October 25, 1994. Section 2 of the Act gives the redevelopment authority at base closure sites the option of following new procedures regarding the manner in which the redevelopment plan for the base is prepared and approved, and how requests are to be made by State and local governments and other interested parties, including homeless assistance providers, for future use of the property. On November 29, 1994, the Mayor of the City of Philadelphia submitted a timely request to be covered by the provisions of the Act. This Notice fulfills the requirement of Section 2(e)(3) of the Act that information describing the redevelopment authority be published in the **Federal Register**.

Also, pursuant Section 2905(b)(7)(b) of the Defense Base Closure and Realignment Act of 1990, as amended by the Act, the following information regarding the redevelopment authority for and surplus property at the Naval Station, Philadelphia, PA, is published:

Redevelopment Authority

The redevelopment authority for Naval Station, Philadelphia, PA, for purposes of implementing the provisions of the Defense Base Closure and Realignment Act of 1990, as amended, is the City of Philadelphia, acting by and through Mayor Edward G. Rendell. For further information contact Ms. Terry Gillen, Deputy Commerce Director and Director, Office of Defense Conversion, City of Philadelphia, 1600 Arch St., 19th Floor, Philadelphia, PA 19103, telephone (215) 686–3643 and facsimile (215) 686–8304.

Surplus Property Descriptions

The following is a listing of the land and facilities at Naval Station, Philadelphia, PA, that are declared surplus to the needs of the federal government.

Land

Approximately 825 acres of improved and unimproved fee simple land including land under water and filled land at the U.S. Naval Station, in the City of Philadelphia, Philadelphia County, PA.

Buildings

The following is a summary of the facilities and other improvements located on the above described land which will also be available when the station closes on January 31, 1996, unless otherwise indicated. Property numbers are available on request.

—Administrative/office facilities (12 structures). Comments: Approx. 353,644 square feet.
—Administrative storage facilities (10 structures). Comments: Approx. 25,256 square feet.
—Aircraft systems facilities (8 structures). Comments: Approx. 663,445 square feet.
—Armory (2 structures). Comments: Approx. 3,500 square feet.
—Bachelor quarters housing for 2,640 personnel (18 structures). Comments: Approx. 532,641 square feet.
—Communication centers (2 structures). Comments: Approx. 14,985 square feet.
—Community facilities (54 structures). Comments: Approx. 499,957 square feet. Police station, child development center, clubs, chapel, temporary lodging facilities, bowling alley, gyms, theater, service station, exchange facilities, commissary, package store, brig, hobby shops, youth and family service facilities, indoor and outdoor swimming pools, etc.
—Dining facility (1 structure). Comments: Approx. 22,375 square feet.
—Family housing with detached garage or carport (48 structures). Comments: Approx. 60,543 square feet.
—Family housing; single and multi-family units for 545 families (129 structures). Comments: Approx. 1,073,560 square feet.
—Family housing (off-site component); multi-family units for 382 families (48 structures). Comments: Approx. 459,128 square feet.
—General storage facilities (11 structures). Comments: Approx. 181,635 square feet.
—Helicopter land pad (1 structure). Comments: Approx. 1,111 square yards.
—High explosive storage facility (1 structure). Comments: Approx. 175 square feet.
—Laundry facilities (3 structures). Comments: Approx. 6,820 square feet.
—Medical facilities (2 structures). Comments: Approx. 28,786 square feet.
—Medical laboratory (1 structure). Comments: Approx. 646 square feet.
—Medical storage facilities (2 structures). Comments: Approx. 55,777 square feet.
—Miscellaneous facilities (numerous structures). Comments: Measuring systems vary. Flag poles, seaplane ramp, ferry slip, bulkheads, damage control (firefighting) trainer, incinerator, hazardous waste handling facilities, fencing, etc.
—Paved areas. Comments: Measuring systems vary. Parking area, roads and sidewalks.
—Pistol range (1 structure). Comments: Approx. 9,000 square feet.
—Playing courts (10 structures). Comments: Various dimensions; tennis courts.
—Playing fields (18 structures). Comments: Various dimensions. Baseball, softball and football fields.
—Printing plant (1 structure). Comments: Approx. 616 square feet.
—Public works shop and maintenance storage facilities (6 structures). Comments: Approx. 29,390 square feet.
—Science and marine laboratory (2 structures). Comments: Approx. 72,600 square feet.
—Small arms storage facilities (3 structures). Comments: Approx. 189 square feet.
—Potable water storage tanks (2 structures). Comments: Approx. 2.4 million gallons.
—Target house storage facility (1 structure). Comments: Approx. 175 square feet.
—Training facilities (10 structures). Comments: Approx. 73,788 square feet.
—Utilities. Comments: Measuring systems vary. Telephone, electrical, sanitary sewer, storm sewer, potable and non-potable water, steam, and railroads.

Expressions of Interest

Pursuant to Section 2905(b)(7)(c) of the Defense Base Closure and Realignment Act of 1990, State and local governments, representatives of the homeless, and other interested parties located in the vicinity of the Naval Station, Philadelphia, may submit to the

redevelopment authority (City of Philadelphia) a notice of interest in the above described surplus property, or any portion thereof. A notice of interest shall describe the need of the government, representative, or party concerned for the desired surplus property. Pursuant to Section 2905(b)(7)(C) and (D), the redevelopment authority shall assist interested parties in evaluating the surplus property for the intended use and publish in a newspaper of general circulation in the City of Philadelphia, PA, the date by which expressions of interest must be submitted. Under Section 2(e)(6) of the Act, the deadline for submissions of expressions of interest may not be less than one (1) month nor more than six (6) months from the date the Mayor of Philadelphia elected to proceed under the Act, i.e., November 29, 1994.

Dated: June 19, 1995.

M. D. Schetzsle,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 95–15916 Filed 6–28–95; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–389–003, et al.]

Tenaska Power Services Co., et al.; Electric Rate and Corporate Regulation Filings

June 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Tenaska Power Company

[Docket No. ER94–389–003]

Take notice that on May 31, 1995, Tenaska Power Services Company (Tenaska) tendered for filing certain information as required by the Commission's letter order dated May 26, 1994 in Docket No. ER94–389–000. Copies of Tenaska's informational filing are on file with the Commission and are available for public inspection.

2. Green Mountain Power Corporation

[Docket No. ER95–978–000]

Take notice that on June 6, 1995, Green Mountain Power Corporation (GMP) tendered for filing a revised definition of ''Additional Charges'' contained in its FERC Electric Tariff, Original Volume No. 2 (''Opportunity Transactions Tariff'') which clarifies the circumstances under which GMP may recover one mill per kilowatt-hour to compensate for difficult-to-quantify costs associated with sales pursuant to that tariff. GMP has requested waiver of the Commission's Regulations to the extent necessary to permit the change to become effective as of May 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Company

[Docket No. ER95–979–000 Company]

Take notice that on May 23, 1995, Northeast Utilities Service Company (NUSCO) tendered for filing on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and Holyoke Power and Electric Company an amendment to a filing for sales of system power to City of Westfield, Gas and Electric Light Department. NUSCO renews its request that the change in rate schedule become effective on May 1, 1995 and that such rate schedule change supersede FERC Rate Schedule No. HP&E 26 at that time.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

4. Hadson Electric, Inc.

[Docket No. ER95–1186–000]

Take notice that on June 8, 1995, Hadson Electric, Inc. tendered for filing a Notice of Cancellation FERC Rate Schedule No. 1.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

5. Puget Sound Power & Light Company

[Docket No. ER95–1188–000 Company]

Take notice that on June 5, 1995, Puget Sound Power & Light Company tendered for filing certain information related to Puget's Residential Purchase and Sale Agreement with the Bonneville Power Administration under the Pacific Northwest Electric Power Planning and Conservation Act.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

6. The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company

[Docket No. ER95–1194–000]

Take notice that on June 9, 1995, The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company and Toledo Edison Company, tendered for filing proposed changes in their FERC Electric Service Rate Schedule Nos. 26, 24, 160, 43 and 45, respectively.

The proposed changes amend the utilities' CAPCO Basic Operating Agreement (Agreement) to permit any two parties to the Agreement to provide capacity and associated energy in connection with scheduled maintenance on a willing supplier/willing receiver basis.

Copies of the filing were served upon the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1195–000]

Take notice that on June 9, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement to provide interruptible transmission service for New England Power Company (NEP).

Con Edison states that a copy of this filing has been served by mail upon NEP.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER95–1196–000]

Take notice that on June 9, 1995, Florida Power & Light Company (FPL), tendered for filing a Notice of Cancellation of FPL's Service Agreement for the Supply of Wholesale Electric Power Service to Municipalities and Rural Electric Cooperatives with the City of Homestead, Florida.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

9. Washington Water Power Company

[Docket No. ER95–1197–000]

Take notice that on June 12, 1995, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a signed service agreement under FERC Electric Tariff Volume No. 4 with Mock Resources, Inc., dba Wickland Power Services. WWP requests waiver of the prior notice requirement and requests an effective date of July 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER95–1198–000]

Take notice that on June 12, 1995, Commonwealth Electric Company (Commonwealth) on behalf of itself and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Customers:

Burlington Electric Department (Burlington)
Enron Power Marketing, Inc. (Enron)
InterCoast Power Marketing Company (InterCoast)
Village of Northfield, Vermont Electric Department (Northfield)

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Power Sales and Exchanges Tariffs designated as Commonwealth's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 3) and Cambridge's Power Sales and Exchanges Tariff (FERC Electric Tariff Original Volume No. 5). These Tariffs, approved by FERC on April 13, 1995, and which have an effective date of March 20, 1995, will allow the Companies and the Customers to enter into separately scheduled transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Company

[Docket No. ER95–1199–000]

Take notice that on June 12, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Upper Peninsula Power Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of June 1, 1995.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

12. Indianapolis Power & Light Company

[Docket No. ER95–1200–000]

Take notice that on June 12, 1995, Indianapolis Power & Light Company (IPL), tendered for filing proposed changes in its FERC Rate Schedule No. 21. The rate schedule supplement consists of Amendment No. 5, dated July 9, 1995 to the Agreement dated October 9, 1986 (1986 Agreement), which sets forth the rates, charges, terms and conditions for wholesale electric service to Wabash Valley Power Association, Inc. (Wabash Valley). Amendment No. 5 extends the 1986 Agreement for a successive term of six (6) months and changes contract language to allow recovery of stranded costs upon termination of service.

The only customer affected by this filing is Wabash Valley, which has executed said Amendment No. 5 and has concurred in this filing.

Copies of this filing were sent to Wabash Valley and to the Indiana Utility Regulatory Commission.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER95–1201–000]

Take notice that on June 12, 1995, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an agreement with Associated Power Services, Inc. (APSI) to provide for the sale of energy and capacity. For energy sold by Con Edison the ceiling rate is 100 percent of the incremental energy cost plus up to 10 percent of the SIC (where such 10 percent is limited to 1 mill per Kwhr when the SIC in the hour reflects a purchased power resource). The ceiling rate for capacity sold by Con Edison is $7.70 per megawatt hour. All energy and capacity sold by APSI will be at market-based rates.

Con Edison states that a copy of this filing has been served by mail upon APSI.

Comment date: July 6, 1995, in accordance with Standard Paragraph E at the end of this notice.

14. Panada-Brandywine, L.P.

[Docket No. QF94–31–003]

On June 20, 1995, Panada-Brandywine, L.P. of 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, to be located 1.5 miles south of Brandywine, Maryland, was previously certified as a qualifying cogeneration facility, *Panada-Brandywine, L.P.*, 67 FERC ¶ 62,162 (1994). The instant request for recertification is due to changes in the ownership structure of the facility.

Comment date: On or before July 31, 1995, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15934 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–P

Notice of Environmental Compliance and Applicant Environmental Report Preparation Training Courses

June 23, 1995.

The Office of Pipeline Regulation (OPR) staff is conducting two sessions of its environmental compliance training course and a new course on what we expect to see in the applicant-prepared environmental report.

These courses are a result of the positive response to our outreach training courses held from 1992 through 1995. We encourage interested organizations and the public to take advantage of the courses to gain an understanding of the requirements and objectives of the Commission in ensuring compliance with all environmental certificate conditions and meeting its responsibilities under the National Environmental Policy Act and other laws and regulations.

Environmental Report Preparation Course

The environmental report preparation course will include a manual covering the following topics:

A. What types of projects require environmental filings.

1. Natural Gas Act section 7
2. Natural Gas Policy Act filings
3. Section 2.55 replacements

B. What filings are required of each type of filing.
C. What to include in each filing.
D. Potential time saving procedures
1. Applicant-prepared DEA
2. Third-party EA or EIS

The staff intends the manual to be a cookbook for preparing environmental filings. Because time is limited and the material required for the other types of filings is not as extensive and is listed in the regulations, the actual presentation at the session will be limited to Natural Gas Act filings under section 7. However, the manual will cover the other types of filings as well.

If you have specific questions related to the subject matter of this course, or if you would like the course to address a particular item, please call Mr. John Leiss at (202) 208–1106.

The one-day environmental report preparation course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the listed reservation dates and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session:	August 29	September 19
Location:	University Park Hotel & Suites, 480 Wakara Way, Salt Lake City, Utah 84108, (801) 581–1000	The Plaza Hotel, 16400 J.L. Hudson Drive, Southfield, Michigan 48075, (810) 559–6500
Reservations:	August 7	September 1

Environmental Compliance Training Course

The two-day environmental compliance training course will include the following topics:

A. Postcertificate clearance filings;
B. Environmental inspection as it relates to:
1. Right-of-way preparation;
2. Temporary erosion control;
3. Cultural resources/Paleontology;
4. Waterbody crossings;
5. Wetland construction;
6. Residential area construction;
7. Right-of-way restoration; and
8. Techniques for environmental compliance.

The environmental compliance training course will be held on the dates and at the locations shown below. Attendees must call the numbers listed for the hotels by the listed reservation dates and identify themselves as FERC seminar attendees to receive the discounted group rate.

Session:	August 30–31	September 20–21
Location:	University Park Hotel & Suites, 480 Wakara Way, Salt Lake City, Utah 84108, (801) 581–1000	The Plaza Hotel, 16400 J.L. Hudson Drive, Southfield, Michigan 48075, (810) 559–6500
Reservations:	August 7	September 1

The OPR staff and Foster Wheeler Environmental Corporation, the Commission's environmental support contractor for natural gas projects, will conduct the training. There is no fee for the courses, but you must pre-register because space is limited.

If you would like to attend the August or September 1995 session(s) of either of these courses, please call the telephone number listed below to obtain a registration for.[1] NOTE: IF YOU PLAN TO ATTEND BOTH THE ENVIRONMENTAL REPORT PREPARATION SESSION AND THE SUBSEQUENT ENVIRONMENTAL COMPLIANCE TRAINING SESSION, YOU MUST REGISTER SEPARATELY FOR EACH. Attendance will be limited to the first 200 people to register in each course. Call or FAX requests for registration forms to: Ms. Donna Connor, Foster Wheeler Environmental Corporation, 470 Atlantic Avenue, Boston, MA 02210, Telephone: (617) 542–8805, FAX: (617) 695–1587

You will receive confirmation of pre-registration and additional information before the training course(s).

Additional training will be offered in the future. Please indicate whether you would like these courses to be offered again, or if you are interested in any other courses with different topics or audiences. Please indicate your preferences for location and time of year. Suggestions on format are welcome.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15933 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[1] The registration forms referenced in this notice are not being printed in the **Federal Register**. Copies of the forms were sent to those receiving this notice in the mail.

[Docket No. CP94–654–001]

Texas Eastern Transmission Corporation; Notice of Availability of the Environmental Assessment for the Proposed Flex-X Riverside Project

June 23, 1995.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas facilities proposed by Texas Eastern Transmission Corporation (Texas Eastern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed facilities including:

- About 2.86 miles of 36-inch-diameter pipeline replacement in Fayette County, Pennsylvania between the Uniontown and Bedford Compressor Stations (Uniontown Replacement);
- About 2.38 miles of 36-inch-diameter pipeline replacement in Bedford County, Pennsylvania between the Bedford and Chambersburg Compressor Stations (Bedford Replacement);
- About 1.98 miles of 36-inch-diameter pipeline replacement in Bucks

County, Pennsylvania between Eagle, Pennsylvania and Lambertville, New Jersey (Eagle Replacement); and

- A new meter and regulation station (Doylestown M&R Station) at Doylestown, Bucks County, Pennsylvania.

The purpose of the proposed facilities would be to provide an additional firm transportation capacity of up to 33,210 dekatherm per day (Dth/d) and a total delivery capacity at Doylestown, Pennsylvania of 50,000 Dth/d.

The EA has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, (202) 208–1371

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

A limited number of copies of the EA are available from: Ms. Jennifer Goggin, Environmental Project Manager, Environmental Review and Compliance Branch II, Office of Pipeline Regulation, Room 7312, 825 North Capitol Street, NW., Washington, DC 20426, (202) 208–2226

Any person wishing to comment on the EA may do so. Written comments must reference Docket No. CP94–654–001, and be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426

Comments should be filed as soon as possible, but must be received no later than July 24, 1995, to ensure consideration prior to a Commission decision on this proposal. A copy of any comments should also be sent to Ms. Jennifer Goggin, Environmental Project Manager, at the above address.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file later 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 comments considered.

Additional information about this project is available from Ms. Jennifer Goggin, Environmental Project Manager.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15962 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–566–000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

June 22, 1995.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP95–566–000]

Take notice that on June 15, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–566–000 a request pursuant to Sections 157.205, 157.211, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.216) for authorization to replace certain obsolete and undersized facilities at its Lewiston East Meter Station in Nez Perce County, Idaho in order to better accommodate its existing firm maximum daily delivery obligations (MDDO) to the Washington Water Power Company (Washington Power), under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that it presently has firm obligations to deliver up to a total of 11,000 Dt per day (at 150 psig) under Rate Schedules TF–1 and TF–2, to Washington Power at the Lewiston East delivery point. Northwest further states that the Lewiston East Meter Station has a maximum design delivery capacity of approximately 7,300 Dt per day (at 150 psig). Since the maximum design capacity of the Lewiston East Meter Station is less then Northwest's firm delivery obligation to Washington Power, Northwest is proposing to upgrade the Lewiston East Meter Station by replacing the two existing undersized 4-inch orifice meters with two 6-inch turbine meters. Northwest states that it also plans to install related auxiliary facilities, including a new 750,000 Btu heater, electronic flow measurement equipment and a relocated meter building. It is stated that the proposed facility upgrade will increase the maximum design delivery capacity of the Lewiston East Meter Station from 7,300 Dt per day to approximately 13,367 Dt per day at a delivery pressure of 150 psig. However, it is further averred that the maximum design delivery capacity of the meter station, as limited by the existing regulators, will increase from 7,300 Dt to 12,500 Dt per day at 150 psig.

Northwest has estimated the cost of the proposed facility upgrade at the Lewiston East Meter Station to be approximately $292,352 which includes the cost of removing the old facilities. Northwest avers that since this expenditure is necessary in order for Northwest to better accommodate existing MDDO's at the Lewiston East Meter Station, Northwest will not require any cost reimbursement from Washington Power.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

2. Tennessee Gas Pipeline Company

[Docket No. CP95–572–000]

Take notice that on June 20, 1995, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP95–572–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a new deliver point in Barren County, Kentucky, to serve Natural Gas of Kentucky, an existing customer, under Tennessee's blanket certificate issued in Docket No. CP82–413–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that Natural Gas of Kentucky has requested that Tennessee provide for a delivery point on its system in Barren County, Kentucky which would permit Natural Gas of Kentucky to move up to 2,000 dekatherms per day of natural gas under an existing IT (interruptible) contract held by Tenneco Gas Marketing Company. In order to effectuate the delivery, Tennessee proposes to construct and operate a new 2-inch hot tap assembly on an existing right-of-way located at Tennessee's M.P. 92–4+5.9 in Barren County, Kentucky. Tennessee estimates the cost of establishing this delivery point to be approximately $10,837, which cost will be reimbursed by Natural Gas of Kentucky. Tennessee further states that Natural Gas of Kentucky will install, own, operate, and maintain approximately 40-feet of 2-inch interconnecting pipe on Tennessee's right-of-way and install,

own, and maintain a meter at the site to be operated Tennessee.

Additionally, Tennessee states that it is currently anticipated that only interruptible quantities of gas will be delivered at this delivery point and thus the construction of this delivery point will not impact Tennessee's peak day and/or annual deliveries.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP95–571–000]

Take notice that on June 19, 1995, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP95–571–000 a request pursuant to Sections 157.205, 157.216 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, 157.211) for authorization to abandon certain obsolete and undersized facilities at the Pasco Meter Station in Franklin County, Washington and to construct and operate upgraded replacement facilities at this station to accommodate its existing firm maximum daily delivery obligations to Cascade Natural Gas Corporation (Cascade Natural) under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to upgrade the Pasco Meter Station by replacing one existing 2-inch regulator with a new 1-inch regulator and one existing 4-inch orifice meter with a new 4-inch turbine meter and appurtenances. These facility replacements will increase the design capacity of the Pasco Meter Station from 2,377 Dth per day to approximately 4,433 Dth per day at 150 psig. Northwest states that it presently has firm maximum daily delivery obligations to deliver up to 4,350 Dth per day, at a pressure of 150 psig, to Cascade Natural at the Pasco delivery point under Rate Schedules TF–1 and TF–2. Northwest further states that total cost of the proposed facility replacements at the Pasco Meter Station is estimated to be $89,570.

Comment date: August 7, 1995, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15935 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–342–003]

Crossroads Pipeline Co.; Notice of Filing

June 23, 1995.

Take notice that on June 19, 1995, Crossroads Pipeline Company (Crossroads), 801 East 86th Avenue, Merrillville, Indiana 46410, filed in Docket No. CP94–342–003 as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Original Tariff Sheet Nos. 62 and 63 and Original Tariff Sheet Nos. 88 through 94.

Crossroads states that Substitute Original Tariff Sheet Nos. 62 and 63 reflect the Commission's policy on capacity release as expressed in Order No. 577, *et seq.*, and that Original Sheet Nos. 88 through 94 include the form of Capacity Release Service Agreement which was omitted from Crossroads original tariff filing made on May 19, 1995 in Docket Nos. CP94–342–001 and MT95–11–000.

Any person desiring to be heard or protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions and protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15936 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–570–000]

El Paso Natural Gas Co.; Notice of Request Under Blanket Authorization

June 23, 1995.

Take notice that on June 19, 1995, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP95–570–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to establish certain delivery points originally constructed for the nonjurisdictional delivery of fuel gas, under El Paso's blanket certificate issued in Docket No. CP82–435–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

El Paso proposes to construct certain tap and meter facilities located at the points listed below as transportation delivery points for delivery of gas to GPM Corporation.

Delivery Point	Location
GPM Block 11 Booster.	Andrews County, Texas.
GPM Crane Water Station.	Crane County, Texas.
GPM East Hobbs Booster.	Lea County, New Mexico.
GPM Eunice Plant	Lea County, New Mexico.
GPM Eunice Treater .	Lea County, New Mexico.
GPM Fullerton Plant .	Andrews County, Texas.
GPM Goldsmith Plant	Ector County, Texas.
GPM Hobbs Booster .	Lea County, New Mexico.
GPM Lee Plant	Lea County, New Mexico.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the

time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15937 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–125–001]

Midwestern Gas Transmission Co.; Notice of Rate Filing

June 23, 1995.

Take notice that on June 20, 1995, Midwestern Gas Transmission Company (Midwestern) filed a request for an extension of time in which to file its report of cashout activity for its first year of operations under restructured services. Midwestern requests permission to file its cashout report within thirty days of its affiliate, Tennessee Gas Pipeline Company (Tennessee), filing an amended first annual cashout report subsequent to final reconciliation of its cashout mechanism. This reconciliation is anticipated to be completed in January, 1996.

Midwestern states that Section 6(f) of its LMS–MA Rate schedule requires Midwestern to file a report and refund plan, if necessary, at the end of each annual period. Due to the dependence of Midwestern's cash out mechanism on that of its affiliate Tennessee, Midwestern contends that it is necessary for Tennessee to file its final amended cashout report prior to Midwestern's submittal in order to ensure the accuracy of Midwestern's report.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commission.

Any person desiring to protest with reference to said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15938 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP95–152–003 and RP94–343–012]

NorAm Gas Transmission Co.; Notice of Filing

June 23, 1995.

Take notice that on June 19, 1995, NorAm Gas Transmission Company (NGT) tendered for filing Substitute Original Sheet No. 168, Substitute Original Sheet No. 168A, Substitute Original Sheet No. 233 and Substitute First Revised Sheet No. 233A to reinstitute previously effective tariff sheets, Original Sheet Nos. 168 and 233.

Pursuant to the Commission's May 1, 1995, Order Denying Rehearing, Allowing Withdrawal of Tariff Sheets, and Rejecting Tariff Sheets, NGT states that it is reinstituting the previously effective tariff sheets, Original Sheet Nos. 168 and 233.

Any person desiring to protest 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 Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. 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. 95–15939 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–350–000]

Pacific Gas Transmission Co.; Notice of Proposed Changes to FERC Gas Tariff

June 23, 1995.

Take notice that on June 20, 1995, Pacific Gas Transmission Company (PGT) tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume No. 1–A, certain revised tariff sheets, to be made effective May 15, 1995.

PGT states that the tariff sheets which it is submitting conform the Capacity Release provisions of its Transportation General Terms and Conditions to the capacity release provisions in Order Nos. 577 and 577–A. PGT also states that the instant filing incorporates the proposed changes originally filed with the Commission on May 11, 1995, as supplemented to conform with Order No. 577–A, issued on May 31, 1995.

PGT further states it has served a copy of this filing upon all interested state regulatory agencies and PGT's jurisdictional customers and upon the parties on the official service compiled by the Secretary in this proceeding.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15940 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL95–48–000, Project No. 2042–001]

Public Utility District No. 1 of Pend Oreille County, Washington; Notice Establishing Comment Period for Petition for Declaratory Order

June 23, 1995.

On May 24, 1995, the Public Utility District No. 1 of Pend Oreille County, Washington, filed a pleading styled ''Petition for a Declaratory Order or, in the Alternative, Application To Amend License, and Request for Hearing'' concerning the Box Canyon Project No. 2042. The project is located on the Pend Oreille River in Pend Oreille County, Washington, and Bonner County, Idaho.

The licensee requests that the Commission issue a declaratory order finding, among other things, that its license for the project, as issued in 1952 and as amended in 1963, authorizes the occupancy and use of Indian lands for power generation.[1]

[1] In the alternative, if the Commission declines to issue a declaratory order, the licensee requests that

Pursuant to Rule 213(d) of the Commission's regulations, answers to petitions are due within 30 days after filing, unless otherwise ordered.[2] Some of the issues presented in the petition are currently under review in the complaint docket for Project No. 2042–001. To avoid possible confusion and to ensure adequate notice to all interested persons, the Commission staff has determined that notice of the petition for a declaratory order should be published and that the deadline for filing an answer, comments, protests, or petitions to intervene in connection to the licensee's petition for a declaratory order should be as established in this notice.

Any party to the complaint proceeding may file an answer to the petition for a declaratory order; and any person may file comments, a protest, or a motion to intervene in Docket No. EL95–48–000; in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.213, and 385.214 (1995). In determining the appropriate action to take with respect to the petition, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any answers, comments, protests, or motions to intervene must be received no later than July 24, 1995.

Lois D. Cashell,

Secretary.

[FR Doc. 95–15941 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–000]

Williams Natural Gas Company; Notice of Filing of Status Report

June 23, 1995.

Take notice that on June 19, 1995, Williams Natural Gas Company (WNG) tendered for filing its report on the status of its cases in litigation.

WNG states that the purpose for the instant filing is to comply with the Commission's order in Docket No. RP94–296–000 issued June 20, 1994. The order directed WNG to file a report on the status of its cases in litigation every 12 months, beginning July 1, 1995, until the cases are resolved. WNG states that this report is provided as Attachment 1 to the filing.

WNG states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 925 North Capital Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. 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. 95–15942 Filed 6–28–95; 8:45 am]

BILLING CODE 6717–01–M

the Commission amend its license to authorize the use and occupancy of Indian lands as necessary to continue with existing project operations, and to establish annual charges for affected Tribal lands under Section 10(e) of the Federal Power Act (FPA). The licensee further requests that, if material issues of fact must be resolved related to either the requested declaratory order or license amendment, an opportunity for an evidentiary hearing be granted.

[2] 18 CFR 385.213(d)(2) (1995). *See also* 18 CFR 385.202 (1995).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5249–7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1995.

FOR FURTHER INFORMATION CONTACT: For further information, or a copy of this ICR, contact Sandy Farmer at (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Protection of Stratospheric Ozone: Labeling (EPA ICR #1757.01). This ICR request approval of a new collection.

Abstract: All products containing a class I or class II ozone depleting substance and products manufactured with a class I substance must be labeled in accordance with the requirements of the Clean Air Act Amendments of 1990 and EPA regulations at 40 CFR 82.100–82.124. The Agency will inspect to ensure that these products contain the appropriate label and will work with Customs to ensure that importers comply with the regulations. The Agency also provides for exemptions from these requirements in cases where no viable alternative exists to the use of a class I substance in manufacturing. Such exemptions are available by petition and the Agency will use the information submitted in a petition to determine whether to grant the petitioner's request.

Burden Statement: Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering the data needed, and completing the collection of information.

Respondents: Manufacturers and importers of products containing class I and class II ozone depleting substances.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden on Respondents: 5040 hours.

Frequency of Collection: as needed.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 23, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15982 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5249–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 31, 1995.

FOR FURTHER INFORMATION OR A COPY CALL: Sandy Farmer at EPA, (202) 260–2740, and refer to EPA ICR No. 0168.06.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Pollutant Discharge Elimination System (NPDES) and Sewage Sluge Management State Programs (EPA ICR No. 0168.06; OMB Control No. 2040–0057). This is a request for extension of a currently approved information collection.

Abstract: under the NPDES Program, States, Federally recognized Indian tribes, and territories may request authority from EPA to manage the NPDES and sewage sludge disposal programs. The current recordkeeping and reporting requirements for State NPDES and sludge program requests, implementation, and oversight are codified in 40 CFR Parts 123, 124, and 501. In the absence of an approved State program, EPA retains the authority to issue permits that establish the effluent limitations and monitoring requirements.

The burden for State program requests includes the activities States, tribes, and territories must complete to request authority for a new NPDES or sludge management program, or to modify an existing program. The burden for State program implementation includes permit enforcement activities, recordkeeping, and State certification of EPA-issued permits. The burden for State program oversight activities includes submittal of permit information and periodic reports to EPA.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 38 hours per response. This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Respondents: States, Indian Tribes, and Territories.

Estimated No. of Respondents: 97.

Estimated Total Annual Burden on Respondents: 1,012,595 hours.

Frequency of Collection: Variable, as needed.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following address. Please refer to EPA ICR No. 0168.06 and OMB Control No. 2040–0057 in any correspondence.

Ms. Sandy Farmer, EPA ICR No. 0168.06
U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW, Washington, DC 20460.

and

Mr. Tim Hunt, OMB Control No. 2040–0057 Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW, Washington, DC 20503.

Dated: June 23, 1995.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 95–15983 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–M

[FRL–5221–4]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Phases II/IIB/V, Lead and Copper, and Methodology for Total Coliforms for the State of Iowa

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Iowa is revising its approved State Public Water System Supervision (PWSS) Program. Iowa has adopted regulations for (1) synthetic organic chemicals and inorganic chemicals (Phases II and V), that correspond to the National Primary Drinking Water Regulations (NPDWR) published by EPA on January 30, 1991 (56 FR 3526) and July 17, 1992 (57 FR 31776); (2) volatile organic chemicals (Phase IIB), that correspond to the NPDWR published by EPA on July 1, 1991 (56 FR 30266); (3) lead and copper, that correspond to the NPDWR published by EPA on June 7, 1991 (56 FR 26460), and as amended on July 15, 1991 (56 FR 32112) and June 29, 1992 (57 FR 28785); and total coliforms, that correspond to the NPDWR published by EPA on June 10, 1992 (57 FR 24744).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon an evaluation of Iowa's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Iowa. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Iowa. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order

affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Iowa Department of Natural Resources, Public Drinking Water Program, Wallace State Office Building, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Pat Ritchey, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551–7409.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 15, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 95–15018 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5221–5]

Public Water System Supervision Program: EPA Tentatively Approves Program Revisions Corresponding to the National Primary Drinking Water Regulations for Lead and Copper for the State of Nebraska

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Nebraska is revising its approved State Public Water System Supervision (PWSS) Program. Nebraska has adopted regulations for the Lead and Copper Rule that correspond to the National Primary Drinking Water Regulations for the Lead and Copper Rule published by the EPA on June 7, 1991 (56 FR 26460).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulation. This determination was based upon a thorough evaluation of Nebraska's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this Notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief; Drinking Water Branch; U.S. Environmental Protection Agency, Region VII; 726 Minnesota Avenue; Kansas City, Kansas 66101–2798.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Nebraska. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Nebraska. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination based upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination is available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, and the Nebraska Department of Health, 301 Centennial Mall South, 3rd Floor, Lincoln, Nebraska 68509.

FOR FURTHER INFORMATION CONTACT: David Horak, EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101–2798, telephone (913) 551–7970.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: May 30, 1995.

Dennis Grams,

Regional Administrator, EPA, Region VII.

[FR Doc. 95–15017 Filed 6–28–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies; Report to Congressional Committees

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies as of December 31, 1994.

SUMMARY: This report has been prepared by the FDIC pursuant to Section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)). Section 37(c) requires each federal banking agency to report annually to the Committee on Banking and Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate any differences between any accounting or capital standard used by such agency and any accounting or capital standard used by any other such agency. The report must also contain an explanation of the reasons for any discrepancy in such accounting and capital standards and must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429, telephone (202) 898–8906.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Banking and Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies as of December 31, 1994

A. Introduction

This report has been prepared by the Federal Deposit Insurance Corporation (FDIC) pursuant to Section 37(c) of the Federal Deposit Insurance Act, which requires the agency to annually submit a report to specified Congressional Committees describing any differences in regulatory capital and accounting standards among the federal banking and thrift agencies, including an explanation of the reasons for these differences. Section 37(c) also requires the FDIC to publish this report in the **Federal Register**.

The FDIC, the Board of Governors of the Federal Reserve System (FRB), and the Office of the Comptroller of the Currency (OCC) (hereafter, the banking agencies) have substantially similar leverage and risk-based capital standards. While the Office of Thrift Supervision (OTS) employs a regulatory capital framework that also includes leverage and risk-based capital requirements, it differs in several respects from that of the banking agencies. Nevertheless, the agencies view the leverage and risk-based capital requirements as minimum standards and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the banking agencies are substantially consistent with generally accepted accounting principles (GAAP) as they are applied by banks. In the limited number of cases where the bank Call Report standards are different from GAAP, the regulatory reporting requirements are intended to be more conservative then GAAP. The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. However, the reporting standards applicable to the TFR differ in some respects from the reporting standards applicable to the bank Call Report.

B. Differences in Capital Standards Among the Federal Banking and Thrift Agencies

B.1. Minimum Leverage Capital

The banking agencies have established leverage capital standards based upon the definition of Tier 1 (or core) capital contained in their risk-based capital standards. These standards require the most highly-rated banks (i.e., those with a composite CAMEL rating of ''1'') to maintain a minimum leverage capital ratio of at least 3 percent if they are not anticipating or experiencing any significant growth and meet certain other conditions. All other banks must maintain a minimum leverage capital ratio that is at least 100 to 200 basis points above this minimum (i.e., an absolute minimum leverage ratio of not less than 4 percent).

The OTS has a 3 percent core capital and a 1.5 percent tangible capital leverage requirement for thrift institutions. Consistent with the requirements of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the OTS has proposed revisions to its leverage standard for thrift institutions so that its minimum leverage standard will be at least as stringent as the revised leverage standard that the OCC applies to national banks.

B.2. Interest Rate Risk

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) mandates that the agencies' risk-based capital standards take adequate account of interest rate risk. The banking agencies requested comment in August 1992 and September 1993 on proposals to incorporate interest rate risk into their risk-based capital standards. The agencies expect to issue another interest rate risk proposal for public comment during 1995. The delay in completing a final rule has been the result of difficulties in designing a meaningful measurement system for interest rate risk and efforts to seek international agreement on capital standards for this risk.

In 1993, the OTS adopted a final rule which adds an interest rate risk component to its risk-based capital standards. Under this rule, thrift institutions with a greater than normal interest rate exposure must take a deduction from the total capital available to meet their risk-based capital requirement. The deduction is equal to one half of the difference between the institution's actual measured exposure and the normal level of exposure. The OTS has deferred the September 30, 1994, effective date of its interest rate risk rule while the banking agencies continue their work on an interest rate risk rule for banks. The approach ultimately adopted by the banking agencies could differ from that of the OTS.

B.3. Subsidiaries

The banking agencies consolidate all significant majority-owned subsidiaries of the parent organization. The purpose of this practice is to assure that capital requirements are related to all of the risks to which the bank is exposed. For subsidiaries which are not consolidated on a line-for-line basis, their balance sheets may be consolidated on a pro-rata basis, bank investments in such subsidiaries may be deducted entirely from capital, or the investments may be risk-weighted at 100 percent, depending upon the circumstances. These options, with respect to the consolidation or ''separate capitalization'' of subsidiaries for the purpose of determining the capital adequacy of the parent organization, provide the banking agencies with the flexibility necessary to ensure that adequate capital is being provided commensurate with the actual risks involved.

Under OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries engaged in activities that are permissible for national banks and subsidiaries engaged in ''impermissible'' activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-for-line basis, if majority-owned, and on a pro rata basis, if ownership is between 5 percent and 50 percent. As a general rule, investments in, and loans to, subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, for subsidiaries which were engaged in impermissible activities prior to April 12, 1989, investments in, and loans to, such subsidiaries that were outstanding as of that date were grandfathered and were phased out of capital over a five-year transition period that expired on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities which had not been phased out of capital were consolidated on a pro rata basis. The phase-out provisions were amended by the Housing and Community

Development Act of 1992 with respect to impermissible subsidiaries that are subject to this requirement solely by reason of their real estate investments and activities. The OTS may extend the transition period until July 1, 1996, on a case-by-case basis if certain conditions are met.

B.4. Intangible Assets

The banking agencies' rules permit purchased credit card relationships and purchased mortgage servicing rights to count toward capital requirements, subject to certain limits. Both forms of intangible assets are in the aggregate limited to 50 percent of core capital. In addition, purchased credit card relationships alone are restricted to no more than 25 percent of an institution's core capital. Any purchased mortgage servicing rights and purchased credit card relationships that exceed these limits, as well as all other intangible assets such as goodwill and core deposit intangibles, are deducted from capital and assets in calculating an institution's core capital.

In February 1994, the OTS issued a final rule making its capital treatment of intangible assets generally consistent with the banking agencies' rules. However, the OTS rule grandfathers preexisting core deposit intangibles up to 25 percent of core capital and all purchased mortgage servicing rights acquired before February 1990.

B.5. Capital Requirements for Recourse Arrangements

B.5.a. Leverage Capital Requirements—The banking agencies require full leverage capital charges on most assets sold with recourse, even when the recourse is limited. This includes transactions where the recourse arises because the seller, as servicer, must absorb credit losses on the assets being serviced. The exceptions to this rule pertain to certain pools of first lien one-to-four family residential mortgages and to certain agricultural mortgage loans.

Banks must maintain leverage capital against most assets sold with recourse because the banking agencies' regulatory reporting rules generally do not permit assets sold with recourse to be removed from a bank's balance sheet (see ''Sales of Assets With Recourse'' in Section C.1. below for further details). As a result, such assets continue to be included in the asset base which is used to calculate a bank's leverage capital ratio.

Because the regulatory reporting rules for thrifts enable them to remove assets sold with recourse from their balance sheets when such transactions qualify for sales under GAAP, the OTS capital rules do not require thrifts to hold leverage capital against such assets.

B.5.b. Low Level Recourse Transactions—The banking agencies and the OTS generally require a full risk-based capital charge against assets sold with recourse. However, in the case of assets sold with limited recourse, the OTS limits the capital charge to the lesser of the amount of the recourse or the actual amount of capital that would otherwise be required against that asset, i.e., the full effective risk-based capital charge. This is known as the ''low level recourse'' rule.

The banking agencies proposed in May 1994 to adopt the low level recourse rule that OTS already has in place. Such action was mandated four months later by Section 350 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA). The FDIC adopted the low level recourse rule on March 21, 1995, and the other banking agencies have taken similar action.

B.5.c. Senior-Subordinated Structures—Some securitized asset arrangements involve the creation of senior and subordinated classes of securities. When a bank originates such a transaction and retains the subordinated interest, the banking agencies require that capital be maintained against the entire amount of the asset pool. However, when a bank acquires a subordinated interest in a pool of assets that it did not own, the banking agencies assign the investment in the subordinated security to the 100 percent risk weight category.

In general, the OTS requires a thrift that holds the subordinated interest in a senior-subordinated structure to maintain capital against the entire amount of the underlying asset pool regardless of whether the subordinated interest has been retained or has been purchased.

In May 1994, the banking agencies proposed to require banking organizations that purchase subordinated interests which absorb the first dollars of losses from the underlying assets to hold capital against the subordinated interest plus all more senior interests.

B.5.d. Recourse Servicing—The right to service loans and other assets may be retained when the assets are sold. This right also may be acquired from another entity. Regardless of whether servicing rights are retained or acquired, recourse is present whenever the servicer must absorb credit losses on the assets being serviced. The banking agencies and the OTS require risk-based capital to be maintained against the full amount of assets upon which a selling institution, as servicer, must absorb credit losses. Additionally, the OTS applies a capital charge to the full amount of assets being serviced by a thrift that has purchased the servicing from another party and is required to absorb credit losses on the assets being serviced.

The banking agencies' May 1994 proposal also would require banking organizations that purchase certain loan servicing rights which provide loss protection to the owners of the loans serviced to hold capital against those loans.

B.6. Collateralized Transactions

The FRB and the OCC have lowered from 20 percent to zero percent the risk weight accorded collateralized claims for which a positive margin of protection is maintained on a daily basis by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government agencies or the central governments of countries that are members of the Organization of Economic Cooperation and Development (OECD).

The FDIC and the OTS still assign a 20 percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by U.S. Government agencies or OECD central governments. The FDIC staff is preparing a proposal that will lower the risk weight for collateralized transactions.

B.7. Limitation on Subordinated Debt and Limited Life Preferred Stock

Consistent with the Basle Accord, the banking agencies limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to an amount not to exceed 50 percent of Tier 1 capital. In addition, all maturing capital instruments must be discounted by 20 percent each year of the five years before maturity. The banking agencies adopted this approach in order to emphasize equity versus debt in the assessment of capital adequacy.

The OTS has no limitation on the ratio of maturing capital instruments as part of Tier 2. Also, for all maturing instruments issued on or after November 7, 1989 (those issued before are grandfathered with respect to the discounting requirement), thrifts have the option of using either (a) the discounting approach used by the banking regulators, or (b) an approach which allows for the full inclusion of all such instruments provided that the amount maturing in any one year does not exceed 20 percent of the thrift's total capital.

B.8. Presold Residential Construction Loans

The four agencies assign a 50 percent risk weight to loans to builders to finance the construction of one-to-four family residential properties that have been presold and meet certain other criteria. However, the OTS and OCC rules indicate that the property must be presold before the construction loan is made in order for the loan to qualify for the 50 percent risk weight. The FDIC and FRB permit loans to builders for residential construction to qualify for the 50 percent risk weight once the property is presold, even if that event occurs after the construction loan has been made.

B.9. Nonresidential Construction and Land Loans

The banking agencies assign loans for nonresidential real estate development and construction purposes to the 100 percent risk weight category. The OTS generally assigns these loans to the same 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, the excess portion is deducted from capital.

B.10. Privately-Issued Mortgage-Backed Securities

The banking agencies, in general, place privately-issued mortgage-backed securities in either the 50 percent or 100 percent risk-weight category, depending upon the appropriate risk category of the underlying assets. However, privately-issued mortgage-backed securities, if collateralized by government agency or government-sponsored agency securities, are generally assigned to the 20 percent risk weight category.

The OTS assigns privately-issued high-quality mortgage-related securities to the 20 percent risk weight category. These are, generally, privately-issued mortgage-backed securities with AA or better investment ratings.

B.11. Other Mortgage-Backed Securities

The banking agencies and the OTS automatically assign to the 100 percent risk weight category certain mortgage-backed securities, including interest-only strips, principal-only strips, and residuals. However, once the OTS' interest rate risk amendments to its risk-based capital standards take effect, stripped mortgage-backed securities will be reassigned to the 20 percent or 50 percent risk weight category, depending upon these securities' characteristics. Residuals will remain in the 100 percent risk weight category.

B.12. Junior Liens on One-to-Four Family Residential Properties

In some cases, a bank may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In this situation, if the total amount of the two loans exceeds a prudent loan-to-value ratio, the FDIC and the FRB would not consider the loan secured by the first lien to be eligible to receive a 50 percent risk weight. Instead, this loan would be assigned to the 100 percent risk weight category. In all cases, the FDIC would assign the loan secured by the second lien to the 100 percent risk weight category regardless of the aggregate loan-to-value ratio. This approach for first liens is intended to avoid possible circumvention of the capital requirement and to capture the risks associated with the combined transactions.

The OCC and OTS generally assign the loan secured by the first lien to the 50 percent risk weight category and the loan secured by the second lien to the 100 percent risk weight category.

B.13. Mutual Funds

Rather than looking to a mutual fund's actual holdings, the banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. Thus, the banking agencies take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund because the composition and risk characteristics of its future holdings cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, both the OTS and the OCC guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis in a manner consistent with the actual composition of the mutual fund.

B.14. ''Covered Assets''

The banking agencies generally place assets subject to guarantee arrangements by the FDIC or the Federal Savings and Loan Insurance Corporation in the 20 percent risk weight category. The OTS places these ''covered assets'' in the zero percent risk-weight category.

B.15. Pledged Deposits and Nonwithdrawable Accounts

Instruments such as pledged deposits, nonwithdrawable accounts, Income Capital Certificates, and Mutual Capital Certificates do not exist in the banking industry and are not addressed in the capital guidelines of the three banking agencies.

The capital guidelines of OTS permit thrift institutions to include pledged deposits and nonwithdrawable accounts that meet OTS criteria, Income Capital Certificates, and Mutual Capital Certificates in capital.

B.16. Agricultural Loan Loss Amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 may defer and amortize certain losses related to agricultural lending that were incurred on or before December 31, 1991. These losses must be amortized over seven years. The unamortized portion of these losses is included as an element of Tier 2 capital under the banking agencies' risk-based capital standards.

Thrifts were not eligible to participate in the agricultural loan loss amortization program established by this statute.

C. Differences in Reporting Standards Among the Federal Banking and Thrift Agencies

C.1. Sales of Assets with Recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if: (1) The transferor surrenders control of the future economic benefits, (2) the transferor's obligation under the recourse provisions can be reasonably estimated, and (3) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the banking agencies is generally to allow banks to report transfers of receivables as sales only when the transferring institution: (1) Retains no risk of loss from the assets transferred and (2) has no obligation for the payment of principal or interest on the assets transferred. As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of first lien one-to-four family residential mortgage loans and agricultural mortgage loans under any one of the government programs (Government National Mortgage Association, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, and Federal Agricultural Mortgage Corporation). Transfers of mortgages under these programs are treated as sales for Call

Report purposes, provided the transfers would be reported as sales under GAAP. Furthermore, private transfers of first lien one-to-four family residential mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, under the risk-based capital framework, the seller's obligation under any recourse provision resulting from transfers of mortgage loans under the government programs or in private transfers that qualify as sales is viewed as an off-balance sheet exposure that will be assigned a 100 percent credit conversion factor. Thus, for risk-based capital purposes, capital is generally required to be held for any recourse obligation associated with such transactions.

The OTS accounting policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under OTS guidelines, off-balance sheet recourse obligations are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes.

On May 25, 1994, the agencies issued for public comment a proposal addressing certain aspects of the regulatory capital and reporting treatment of assets sold with recourse. If finalized, the proposal could reduce the differences between the bank regulatory reporting requirements and GAAP in this area (which OTS follows) by allowing a larger portion of asset transfers with recourse to be treated as sales for Call Report purposes. In addition, the staffs of the four agencies are working to implement Section 208 of the RCDRIA which mandates that the regulatory reporting requirements applicable to transfers of small business obligations with recourse by qualified insured depository institutions to be consistent with GAAP.

C.2. Futures and Forward Contracts

The banking agencies, as a general rule, do not permit the deferral of losses on futures and forward contracts whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard prior to the issuance of FASB Statement No. 80, which permits hedge or deferral accounting under certain circumstances. Hedge accounting in accordance with FASB Statement No. 80 is permitted by the banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow generally accepted accounting principles for futures and forward contracts. In accordance with FASB Statement No. 80, when hedging criteria are satisfied, the accounting for a contract is related to the accounting for the hedged item. Changes in the market value of the contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses which would be reflected as assets on the balance sheet.

The FASB is working to develop a comprehensive hedge accounting framework for all free-standing derivative instruments, including futures and forward contracts and certain on-balance sheet instruments, that can be applied consistently by all enterprises. The banking agencies and the OTS are monitoring the progress of this project.

C.3. Excess Servicing Fees

As a general rule, the banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing arises when loans are sold with servicing retained and the stated servicing fee rate is greater than a normal servicing fee rate. With the exception of sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset.

In contrast, the OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

C.4. Specific Valuation Allowances for, and Charge-offs of, Troubled Real Estate Loans not in Foreclosure

A troubled real estate loan is considered ''collateral dependent'' when the repayment of the debt will be provided solely by the underlying real estate and there are no other available and reliable sources of repayment.

For a troubled collateral dependent real estate loan, the banking agencies generally treat any portion of the loan balance that exceeds the amount that is adequately secured by the value of the collateral, and that can clearly be identified as uncollectible, as a loss that should be charged off. The banking agencies believe that this approach accurately reflects the amount of recovery a financial institution is likely to receive if it is forced to foreclose on the underlying collateral. This banking agency approach is basically consistent with GAAP as it has been applied by banks.

The most recent OTS policy has been to require a specific valuation allowance against (or a partial charge-off of) a loan for the amount by which the recorded investment in the loan (generally, its book value) exceeds its ''value,'' as defined, when it is probable, based on current information and events, that a thrift will be unable to collect all amounts due (both principal and interest) on the loan. The ''value'' is either the present value of the expected future cash flows on the loan discounted at the loan's effective interest rate, the loan's observable market price, or the fair value of the collateral. Previously, the OTS generally required specific valuation allowances for troubled real estate loans based on the estimated net realizable value of the collateral, an amount that normally exceeds fair value. By revising its policy in 1993, OTS narrowed the accounting difference between banks and thrifts. The revised OTS policy is somewhat similar to the requirements of FASB Statement No. 114 on loan impairment, which was issued in May 1993.

As all banks and thrifts adopt FASB Statement No. 114 during 1995, this accounting difference will be eliminated. When Statement No. 114 is applied for regulatory reporting purposes, impairment of a collateral dependent loan must be measured using the fair value of the collateral.

C.5. Offsetting of Assets and Liabilities

FASB Interpretation No. 39, ''Offsetting of Amounts Related to Certain Contracts,'' became effective in 1994. Interpretation No. 39 interprets the longstanding accounting principle that ''the offsetting of assets and liabilities in the balance sheet is improper except where a right of setoff exists.'' Under Interpretation No. 39, four conditions must be met in order to demonstrate that a right of setoff exists. A debtor with ''a valid right of setoff may offset the related asset and liability and report the net amount.'' The banking agencies allow banks to apply Interpretation No. 39 for Call Report purposes solely as it relates to on-balance sheet amounts associated with off-balance sheet conditional and exchange contracts (e.g., forwards, interest rate swaps, and options). Under the Call Report instructions, netting of other assets and liabilities is not

permitted unless specifically required by the instructions.

The OTS practice is to follow GAAP as it relates to offsetting in the balance sheet.

C.6. Push Down Accounting

Push down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of a substantive change in control. Under push down accounting, when a depository institution is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution as well as in any consolidated financial statements of the institution's parent.

The banking agencies require push down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission.

The OTS requires push down accounting when there is at least a 90 percent change in ownership.

C.7. Negative Goodwill

Under Accounting Principles Board Opinion No. 16, ''Business Combinations,'' negative goodwill arises when the fair value of the net assets acquired in a purchase business combination exceeds the cost of the acquisition and a portion of this excess remains after the values otherwise assignable to the acquired noncurrent assets have been reduced to a zero value.

The banking agencies require negative goodwill to be reported as a liability on the balance sheet and do not permit it to be netted against goodwill that is included as an asset. This ensures that all goodwill assets are deducted in regulatory capital calculations consistent with the internationally agreed-upon Basle Accord.

The OTS permits negative goodwill to offset goodwill assets on the balance sheet.

C.8. In-Substance Defeasance of Debt

The banking agencies do not permit banks to report the defeasance of their liabilities in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust established solely for satisfying the debt. In order to qualify for this treatment, the possibility that the debtor will be required to make further payments on the debt, beyond the funds placed in the trust, must be remote. With defeasance, the debt is netted against the assets placed in the trust, a gain or loss results in the current period, and both the assets placed in the trust and the liability are removed from the balance sheet. However, for Call Report purposes, banks must continue to report defeased debt as a liability and the securities contributed to the trust must continue to be reported as assets. No netting is permitted, nor is any recognition of gains or losses on the transaction allowed. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocability of trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

The OTS practice is to follow FASB Statement No. 76.

Dated at Washington, D.C., this 22nd day of June, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–15930 Filed 6–28–95; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1055–DR]

Kentucky; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kentucky, (FEMA–1055–DR), dated June 13, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kentucky dated June 13, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 13, 1995:

The counties of Christian, Laurel and Pike for Individual Assistance.

The counties of Carter, Elliott and Floyd for Individual Assistance. (already designated for Public Assistance and Hazard Mitigation Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15980 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 22, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995:

The counties of Andrew, Atchinson, Bates, Chariton, Daviess, Dekalb, Gentry, Henry, Howard, Lafayette, Linn, Macon, Moniteau, Perry and Warren for Individual Assistance. (Already designated for Public Assistance.)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15977 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated June 2, 1995, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 2, 1995:

The counties of Camden, Jasper, Maries, McDonald, Morgan and New Madrid for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15978 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1054–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri (FEMA–1054–DR), dated June 2, 1995, and related determinations.

EFFECTIVE DATE: June 23, 1995.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 23, 1995.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 95–15979 Filed 6–28–95; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Central Bancompany, 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 July 24, 1995.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Pleasant Hope Bancshares, Inc., Pleasant Hope, Missouri, and thereby indirectly acquire 100 percent of the voting shares of Pleasant Hope Bank, Pleasant Hope, Missouri, and 100 percent of the voting shares of Webster County Bank, Marshfield, Missouri.

Board of Governors of the Federal Reserve System, June 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–15964 Filed 6–28–95; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Report of the Tar, Nicotine, and Carbon Monoxide Content of 1107 Varieties of Domestic Cigarettes

ACTION: Notice.

SUMMARY: The Federal Trade Commission publishes the Report of the Tar, Nicotine, and Carbon Monoxide Content of 1107 Varieties of Domestic Cigarettes.

DATES: June 29, 1995.

ADDRESSES: Copies of the full report are available from the FTC's Public Reference Branch, Room 130, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580. (202) 326–3222.

FOR FURTHER INFORMATION CONTACT: Phillip S. Priesman, Attorney, Federal Trade Commission, Bureau of Consumer Protection, 6th St. and Pennsylvania Ave., N.W., Washington, D.C. 20580. Telephone (202) 326–2484.

SUPPLEMENTARY INFORMATION: These are the most recent test results of the tar, nicotine, and carbon monoxide levels of the smoke of domestic cigarettes reported by the FTC. This Report contains data on 1107 varieties of cigarettes manufactured and sold in the United States in 1993. The Tobacco Institute Testing Laboratory (TITL), a private laboratory operated by the cigarette industry, conducted the tar, nicotine, and carbon monoxide testing for the widely-available domestic cigarette varieties. This testing was conducted under the review of a representative of the FTC through periodic unannounced inspections. TITL provided the results to the respective cigarette companies. The companies provided the data generated by TITL regarding their own brands to the FTC in response to compulsory process issued by the Commission. Cigarette smoke from generic, private label, and not-widely-available cigarettes was not tested by TITL, but was tested by the cigarette companies and provided under compulsory process to the FTC. The methodology, processes, and procedures that the companies and TITL employed are the same as those the Commission has followed in the past.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–15972 Filed 6–28–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of Health Care Policy and Research Special Emphasis Panel Meeting

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2) announcement is made of the following special emphasis panel scheduled to meet during the month of July 1995:

Name: Health Care Policy and Research Special Emphasis Panel

Date and Time: July 20–21, 1995, 8:30 a.m.

Place: The DoubleTree, 1750 Rockville Pike, Woodmount Room, Rockville, MD 20852. Open July 20, 8:30 a.m. to 9:30 a.m. Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications on research that will provide (1) Severity and Acuity Measures for Illness and Injury for Children; (2) Child and Adolescent Patient Outcomes and Outcome Measures; (3) Cost of Emergency Medical Services for Children; and (4) Emergency Medical Services for Children (EMSC) System Organization, Configuration, and Operation.

Agenda: The open session of the meeting on July 20, from 8:30 a.m. to 9:30 a.m., will be devoted to a business meeting covering administrative matters. During the closed session, the committee will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), it has been determined that this latter session will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members or other relevant information should contact Gerald E. Calderone, Ph.D., Agency for Health Care Policy and Research, Suite 400, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 595–2462.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: June 21, 1995.

Clifton R. Gaus,

Administrator.

[FR Doc. 95–15926 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–90–M

Food and Drug Administration

[Docket No. 95N–0185]

Drug Export; Arimidex (Anastrozole) 1 Milligram (mg) Tablet

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zeneca Pharmaceuticals Inc., has filed an application requesting conditional approval for the export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Zeneca Pharmaceuticals, Inc., 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437, has filed an application requesting conditional approval for the export of the human drug Arimidex (Anastrozole) 1 mg tablet to the United Kingdom. This product is used for the treatment of advanced colorectal cancer. The application was received and filed in the Center for Drug Evaluation and Research on May 30, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 10, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 19, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–15969 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0184]

Drug Export; Tomudex® (Paltitrexid) 2 Milligrams (MG) Powder for Infusion and 5 Milliliters (ML) Clear Glass Vial

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Zeneca Pharmaceuticals, Inc., has filed an application requesting conditional approval for the export of the human drug Tomudex® (Paltitrexid) 2 mg powder for infusion and 5 mL clear glass vial to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: James E. Hamilton, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–3150.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Zeneca Pharmaceuticals, Inc., 1800 Concord Pike, P.O. Box 15437, Wilmington, DE 19850–5437, has filed an application requesting conditional

approval for the export of the human drug Tomudex® (Paltitrexid) 2 mg powder for infusion and 5 mL clear glass vial to the United Kingdom. This product is used for the treatment of advanced colorectal cancer. The application was received and filed in the Center for Drug Evaluation and Research on May 30, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by July 10, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: June 19, 1995.

Betty L. Jones,

Deputy Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 95–15925 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Public Law 96–511).

1. *Type of Request:* Reinstatement, without change of a previously approved collection for which approval has expired; *Title of Information Collection:* Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Report; *Form No.:* HCFA–416; *Use:* States are required to submit annual EPSDT program reports to HCFA pursuant to section 1902(a) (43) of the Social Security Act. These reports provide HCFA with data necessary to assess the effectiveness of State EPSDT programs, to develop trend patterns and projections nationally, and to respond to inquiries; *Respondents:* State Medicaid agencies; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours Requested:* 1,568.

Additional Information or Comments: Call the Reports Clearance Office on (410) 786–1326 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch,Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Kathleen B. Larson,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 95–15775 Filed 6–28–95; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

HIV Emergency Relief Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to eligible metropolitan areas.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1995 funds have been awarded to the 42 eligible metropolitan areas (EMAs) that have been the most severely affected by the HIV epidemic. Although these funds have already been awarded to the EMAs, HRSA is publishing this notice to inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Emergency Relief Grant Program and the statutory requirements governing the use of the funds.

The purposes of these funds are to deliver or enhance HIV-related (1) outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and (2) inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities. The HIV Emergency Relief Grant Program was authorized by Title I of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–333.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the Title I HIV Emergency Relief Grant Program should contact the Office of the Chief Elected Official (CEO) in their locality, and may obtain information on their CEO contact by calling Anita Eichler, M.P.H., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $349,370,000 was made available for the Title I HIV Emergency Relief Grant Program. Of the amount available, 50 percent was allocated to the 42 EMAs according to a formula based on the number and incidence of AIDS cases reported to the Centers for Disease Control and Prevention (CDC) as of March 31, 1994. The other 50 percent was awarded competitively to the EMAs as supplemental grants. Below is a distribution of grants made to the 42 EMAs.

Grantee	Total award
Alameda County CA (Oakland).	$4,148,299
Austin TX	2,124,274
Baltimore MD	4,715,150
Bergen-Passaic NJ	2,847,639
Boston MA	7,079,242
Broward County FL (Ft. Lauderdale).	5,091,994
Caguas PR	902,928
Chicago IL	12,099,865
Dallas County TX (Dallas)	8,176,385
Denver CO	3,092,041
Detroit MI	2,406,902
Dutchess County NY	609,583
Fulton County GA (Atlanta)	9,091,331
Harris County TX (Houston)	10,233,981
Hudson County NJ (Jersey City).	3,770,366
Jacksonville FL	2,418,868
Kansas City MO	2,726,195
Los Angeles CA	31,037,580
Metro-Dade County FL (Miami).	19,195,347
Nassau/Suffolk NY	3,895,849
New Haven CT	2,711,634
New Orleans LA	3,503,009
New York City NY	93,587,184
Newark NJ	11,791,405
Orange County CA	3,175,288
Orange County FL (Orlando)	3,194,835
Philadelphia PA	9,836,096
Phoenix AZ	2,447,784
Ponce PR	1,908,071
Portland OR	2,402,734

Grantee	Total award
San Antonio TX	1,731,222
San Bernardino CA	2,656,331
San Diego CA	5,628,252
San Francisco CA	31,969,914
San Juan PR	10,269,416
Seattle WA	4,048,484
Sonoma County CA (Santa Rosa).	1,207,605
St Louis MO	2,581,330
Tampa/St Petersburg FL	4,231,119
Vineland NJ	340,644
Washington, DC	10,713,183
West Palm Beach FL	3,770,641

Eligible Grantees

Metropolitan areas which were eligible for grant awards under Title I were those areas for which, as of March 31, 1994, there had been reported to and confirmed by the CDC a cumulative total of more than 2,000 cases of AIDS; or, for which the per capita incidence of cumulative cases of AIDS was not less than 0.0025, as computed on the basis of the most recently available data reported to CDC for the population in the area.

Grants were awarded to the chief elected official of the city or urban county in each EMA that administers the public health agency providing outpatient and ambulatory services to the greatest number of individuals with AIDS.

To be eligible for assistance under Title I, the CEO was required to establish or designate an HIV health services planning council to: (1) Establish priorities for the allocation of funds within the eligible area; (2) develop a comprehensive plan for the organization and delivery of health services described in the statute that is compatible with any State or local plan regarding the provision of health services to individuals with HIV disease; and (3) assess the efficiency of the administrative mechanism in rapidly allocating funds to the areas of greatest need within the eligible area. The planning council must include representatives of: Health care providers; community-based and AIDS service organizations; social services providers; mental health services providers; local public health agencies; hospital planning agencies or health care planning agencies; affected communities, including individuals with HIV disease; non-elected community leaders; State government; and grantees receiving categorical grants for early intervention services under Title III of the CARE Act. The allocation of funds and services within the EMA must be made in accordance with the priorities established by the planning council.

To be eligible to receive a grant under Title I, the EMAs were required to submit an application containing such information as the Secretary required, including assurances adequate to ensure:

- That funds received would be utilized to supplement not supplant State funds provided for HIV-related services;
- That the political subdivisions within the EMA would maintain HIV-related expenditures at a level equal to that expended for the 1-year period preceding the first fiscal year for which the grant was received. Funds received under Title I may not be used in maintaining the required level of expenditures;
- That the EMA has an HIV health services planning council and has entered into intergovernmental agreements with any required political subdivisions and has developed or will develop a comprehensive plan for the organization and delivery of health services, in accordance with the legislation;
- That entities within the EMA that receive Title I funds will participate in an established HIV community-based continuum of care if such continuum exists within the EMA;
- That Title I funds will not be utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis; and
- To the maximum extent practicable, that HIV health care and support services provided with Title I assistance will be provided and without regard to the current or past health condition of the individual. Such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and a program of outreach will be provided to inform such individuals of such services.

General Use of Grant Funds

EMAs must use the Title I HIV Emergency Relief grants to provide financial assistance to public or nonprofit entities, for the purpose of delivering or enhancing—

- HIV-related outpatient and ambulatory health and support services, including case management and comprehensive treatment services, for individuals and families with HIV disease; and
- HIV-related inpatient case management services that prevent unnecessary hospitalization or that expedite discharge, as medically appropriate, from inpatient facilities.

Services supported by the Title I grant funds must be accessible to low-income individuals and families, including women and children with HIV infection, minorities, and homeless, and persons affected by chemical dependency.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–277, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or, in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

Grants awarded for the Title I HIV Emergency Relief Grant Program are subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. The application packages made available by HRSA to the EMAs contained a listing of States which have chosen to set up such a review system and provided a point of contact in the States for the review.

The catalog of Federal Domestic Assistance Numbers are: Formula Grants—93.915; Supplemental Grants—93.914.

Dated: June 23, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15970 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–15–M

HIV Care Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of grants made to States and territories.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that fiscal year 1995 funds have been awarded to States and territories (hereinafter States) for the HIV Care Grant Program. Although these funds have already been awarded to the States, HRSA is publishing this notice to

inform the general public of the existence of the funds. In addition, HRSA determined that it would be useful for the general public to be aware of the structure of the HIV Care Grant Program and the statutory requirements governing the use of the funds.

Funds will be used by the States to improve the quality, availability, and organization of health care and support services for individuals and families with HIV infection. The HIV Care Grant Program was authorized by Title II of the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Public Law 101–381, which amended Title XXVI of the Public Health Service Act. Funds were appropriated under Public Law 103–333.

FOR FURTHER INFORMATION CONTACT: Individuals interested in the HIV Care Grant Program should contact the appropriate office in their State, and may obtain information on their State contact by calling Anita Eichler, M.P.H., Director, Division of HIV Services, at (301) 443–6745.

SUPPLEMENTARY INFORMATION:

Availability of Funds

A total of $174,766,500 was made available for the Title II HIV Care Grant Program. These funds have been allotted to the States according to a formula based on the number of AIDS cases reported to the Centers for Disease Control and Prevention for the 24 months ending September 30, 1994, and a per capita income factor. Below is the distribution of funds by State.

State	Amount
Alabama	$1,349,942
Alaska	100,000
Arizona	1,759,313
Arkansas	753,038
California	27,867,193
Colorado	1,980,699
Connecticut	2,404,858
Delaware	585,604
District of Columbia	2,532,524
Florida	17,780,752
Georgia	4,731,696
Hawaii	499,350
Idaho	138,867
Illinois	5,577,650
Indiana	1,536,770
Iowa	333,360
Kansas	568,263
Kentucky	643,697
Louisiana	2,785,044
Maine	228,492
Maryland	4,684,012
Massachusetts	3,776,077
Michigan	2,675,943
Minnesota	973,550
Mississippi	954,192
Missouri	2,504,335
Montana	100,000
Nebraska	267,083
Nevada	964,174
New Hampshire	175,763
New Jersey	8,958,831
New Mexico	479,074
New York	29,093,044
North Carolina	2,414,668
North Dakota	100,000
Ohio	2,623,138
Oklahoma	1,050,786
Oregon	1,300,587
Pennsylvania	5,177,510
Rhode Island	554,753
South Carolina	2,679,771
South Dakota	100,000
Tennessee	1,846,877
Texas	12,636,414
Utah	428,266
Vermont	103,727
Virginia	2,642,609
Washington	2,310,797
West Virginia	184,768
Wisconsin	1,063,650
Wyoming	100,000
Guam	2,902
Puerto Rico	7,682,087
Virgin Islands [1]	0

[1] Did not apply for FY 1995 funds.

Eligibility Criteria

In order to receive funding under Title II of the CARE Act, each State was required to develop:

- A detailed description of the HIV-related services provided in the State to individuals and families with HIV disease during the year preceding the year for which the grant was requested, and the number of individuals and families receiving such services; and
- A comprehensive plan for the organization and delivery of HIV health care and support services to be funded with the Title II grant, including a description of the purposes for which the State intends to use such assistance.

Each State was also required to submit an application containing such agreements, assurances, and information as the Secretary determined to be necessary to carry out this program, including an assurance that:

- The public health agency that is administering the grant for the State will conduct public hearings concerning the proposed use and distribution of the Title II grant assistance;
- The State will, to the maximum extent practicable, ensure that HIV-related health care and support services delivered with Title II assistance will be provided and without regard to the current or past health condition of the individual; ensure that such services will be provided in a setting that is accessible to low-income individuals with HIV disease, and provide outreach to inform such individuals of the services available; and, in the case of a State that intends to use grant funds for the continuation of health insurance coverage, ensure that the State has established a program that assures that such amounts will be targeted to individuals who would not otherwise be able to afford health insurance coverage, that income, assets, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and that information concerning such criteria will be made available to the public;
- The State will provide for periodic independent peer review to assess the quality and appropriateness of health and support services provided by entities that receive Title II funds from the State;
- The State will permit and cooperate with any Federal investigations undertaken regarding programs conducted under Title II;
- The State will maintain HIV-related activities at a level that is equal to not less than the level of such expenditures by the State for the 1-year period preceding the fiscal year for which the State applied to receive a grant under Title II; and
- The State will ensure that grant funds are not utilized to make payments for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service (1) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program, or (2) by an entity that provides health services on a prepaid basis.

General Use of Grant Funds

States may use the HIV Care Grant funds to:

- Establish and operate HIV care consortia within areas most affected by HIV. The statute defines a consortium as an association of one or more public, and one or more nonprofit private health care and support service providers and community-based organizations operating within areas determined by the State to be most affected by HIV disease.
- Provide home- and community-based care services for individuals with HIV disease. Funding priorities must be given to entities that provide assurances to the State that they will participate in HIV care consortia if such consortia exist within the State, and will utilize the funds for the provision of home- and community-based services to low-income individuals with HIV disease.
- Provide assistance to assure the continuity of health insurance coverage for low-income (as defined by the State)

individuals with HIV disease. The State must establish a program that assures that (1) funds will be targeted to individuals who would not otherwise be able to afford health insurance coverage, and (2) income, asset, and medical expense criteria will be established and applied by the State to identify those individuals who qualify for assistance, and information concerning such criteria shall be made available to the public.

- Provide treatments that have been determined to prolong life or prevent serious deterioration of health for low-income individuals with HIV disease.

A State must use at least 15 percent of its grant funds to provide health and support services to infants, children, women and families with HIV disease.

At least 75 percent of the fiscal year 1995 Title II grant awarded to a State must be obligated to specific programs and projects and made available for expenditure within 120 days of the receipt of the grant by the State.

Federal Smoke-Free Compliance

The Public Health Service strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Executive Order 12372

It has been determined that the Title II HIV Care Grant Program is not subject to the provisions of Executive Order 12372 concerning inter-governmental review of Federal programs.

The Catalog of Federal Domestic Assistance Number is 93.917.

Dated: June 23, 1995.

Ciro V. Sumaya,

Administrator.

[FR Doc. 95–15971 Filed 6–28–95; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Assistant Secretary for Public and Indian Housing

[Docket No. N–95–1742; FR–3646–04]

Submission of Proposed Information Collection to OMB for Indian Housing Program; Amendments

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposal. 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, D.C. 20503; or Joan Campion, Rules Docket Clerk, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development (HUD), 451 7th Street, S.W., Room 4178, Washington, D.C. 20410. (202) 708–0050. This is not a toll-free number. Copies of the documents submitted to OMB may be obtained from Mr. Weaver.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the Department of HUD has submitted to OMB, for expedited processing, an information collection package with respect to information required for the Indian Housing Program: Amendments. It is also requested that OMB complete its review within 15 days.

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).

(1) Title of the information collection proposal: Indian Housing Program: applications, certifications, resident consultation, reporting, agreements, plans, operating budget and supporting documentation, Indian preference, schedules, conversion proposals etc.

(2) Office of the agency to collect the information: Office of the Assistant Secretary for Public and Indian Housing.

(3) Description of the need for the information and its proposed use: The information that will be collected are necessary for HUD to implement various Indian Housing Programs, to approve eligible applicants for grant funding under these programs and to monitor the effectiveness of the programs for meeting its purpose. Establishing resident admissions and occupancy procedures, resident involvement/consultation during application processing, and notifications are required by HUD statute.

(4) Agency form numbers: HUD–52730, HUD–3188, HUD–53045/53045A

(5) Members of the public who will be affected by the proposal: Indian Housing Authorities

(6) How frequently information submissions will be required: One-time; reporting annually.

(7) 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: 69,426 Total Burden Hours, 191 IHAs/2,100 Residents, one-time average 35 hours.

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement: new and reinstatement.

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department: Deborah Lalancette, HUD, (202) 755–0088, Joseph Lackey, Jr., OMB, (202) 395–7316.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C.; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 22, 1995.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Indian Housing Program; Amendments; Final Rule Parts 905 and 950.

Office: Office of Native American Programs.

Description of the Need for the Information and its Proposed Use: The information that will be collected are necessary for HUD to implement various Indian Housing Programs, to approve eligible applicants for grant funding under these programs and to monitor the effectiveness of the programs for meeting its purpose. Establishing resident admissions and occupancy procedures, resident involvement/consultation during application processing, and notifications are required by HUD statute.

Form Numbers: HUD–52730, HUD–3188, HUD–53045/HUD–53045A.

Respondents: Indian Housing Authorities.

Reporting Burden:

	Number of respondents	×	Frequency of responses	×	Hours per response	=	Burden hours
Application Development; Site Report; Cost Budget; Certifications; Plans; Agreements; Operating Budgets; Notification; Documentation; Reporting.	191		1		Varies		69,426

Status: Reinstatement.

Contact: Debbie Lalancette, HUD, (202) 755–0088.

Dated: June 22, 1955.

Part 950—Indian Housing: Revised Consolidated Program Regulations

A. Justification

1. Approval is requested for information collections (new (N) and existing without OMB Approval (E). The Indian Housing Act of 1988 (Public Law 100–358, 102 Stat. 676) created a separate Title II of the U.S. Housing Act of 1937 (42 U.S.C. 1437aa). The Indian Housing Revised Consolidated Program Regulations (Part 905) were drafted to implement the Indian Housing Act of 1988. HUD has reviewed these regulations and added a new Part 950 which contains the Indian Housing consolidated regulations that were previously set forth in 24 CFR part 905. In addition, Part 950 amends a number of the Indian Housing consolidated regulations to simplify program processes, reduce the number of regulatory requirements, and provide more flexibility to local Tribal and Indian housing authority officials.

(E) Section 950.135(e)—Indian Housing Authorities (IHAs) must prepare and submit a management improvement plan to the Field Office of Native American Programs (FONAP) when it is informed that it lacks administrative capability. The Plan must describe in detail the method for correction of existing deficiencies to achieve administrative capability and the time schedule to be maintained. The Plan shall be approved by the IHA Board of Commissioners and is subject to HUD approval.

(E) Section 950.135 (f)—An IHA may be classified as ''high risk'' and determined ineligible for certain types of future funding related to the classification of the risk, or may be determined eligible for future funding but subject to special conditions or restrictions corresponding to the high risk classification. Some of the special conditions could be submission to HUD of additional documentation, more detailed financial reports; establishing additional approval by HUD.

(E) Section 950.135(g)—An IHA may appeal a corrective action order or a determination of high risk status to the Administrator, Field Office of Native American Programs (FONAP). The appeal must be in writing. An IHA may appeal the decision of the FONAP Administrator to the Director of ONAP, Headquarters if the case involves actions related to a determination of ineligibility of funding for the upcoming funding cycle. The appeal must be writing.

(E) Section 950.160(a)(4)—An IHA shall maintain records sufficient to detail significant history of an procurement i.e., solicitation and award procedures comply with State, tribal, or local laws, award does not exceed approved budget amount, IHA renewed contractor's qualifications.

(E) Section 950.160(b)—All IHAs must adopt and promulgate rules and regulations for the procurement and administration of supplies, materials, services, and equipment in connection with the development and operations of its projects. As soon as these standards, rules or regulations are adopted, or modified, the IHA must submit a copy to HUD.

(E) Section 950.175—Indian Preference requirements of 7(b) of the Indian Self-determination and Education Assistance Act apply to all procurement under a contract with the IHA. If only one bids received the IHA must request a HUD review in accordance with 24 CFR 85.36 in order to award the contract to the single bidder. (Current OMB Number 2577–0076, expires 8/31/95.)

(E) Section 950.215—The development project production methods are determined by the IHA. If HUD disapproves of the preferred development, the IHA must be provided justification for the disapproval. In all cases where the IHA chooses the Force Account method prior HUD approval must be obtained. The IHA must demonstrate that it has the technical and administrative capability to complete the project within the projected time and budget. (Current OMB Number 2577–0030, expires 2/28/97.)

(E) Section 950.225—Application for a project are submitted in response to a NOFA published by HUD. The applicant must submit information to HUD which enables the Department to rate and rank applications under the competitive process. (2577–0030)

(E) Section 950.229—The IHA shall submit for HUD review and acceptance a development cost budget showing anticipated expenditures and any needed supporting documentation before funds can be obligated or expended. (Current OMB 2577–0032, expires 8/31/95.)

(N) Section 950.230—At the beginning of the development planning process, an IHA prepares a schedule of activities guiding the process. The schedule, and any amendments thereto, are provided to HUD to be used in planning and monitoring activities.

(E) Section 950.231—Upon notification of a development grant approval, the IHA shall schedule a project coordination meeting to plan and schedule the steps needed to develop the project. IHA shall establish a schedule of planning activities with target dates for completion of key activities. The schedule, and any amendments thereto, shall be provided to meeting participants and to HUD to be used in planning and monitoring activities. (2577–0030)

(N) Section 950.247—The need to submit the required documents are the direct results of the change in the environmental review process for public and Indian Housing programs. A statutory change moved the environmental review responsibility from the HUD field office staff to the tribal government. The process now requires the tribe to complete the environmental review and provide the IHA a written certification reflecting the completion of the process and the nature of the findings. The IHA will submit the certification along with a request for release of funds to the area ONAP for each project to be undertaken.

(E) Section 950.250(a)—IHAs must certify to HUD that all conditions that would prevent the site from being included in the project have been

satisfactorily addressed. (Current OMB Number 2577–0031, expires 4/30/95.)

(E) Section 950.260—Upon completion of the project planning stage the IHA must submit to HUD a development cost budget, certification attesting to the completion of all preconstruction activities and project characteristic information. The information should be submitted in accordance with the schedule established at the project coordination meeting. This information will be used to determine compliance with program requirements and concerned when determining the IHA's administrative capacity. If the IHA's submission is not sufficient to meet the requirements of this section, HUD will notify the IHA and allow the IHA to amend or resubmit the documents. (Current OMB Number 2577–0032, expires 8/31/95.)

(E) Section 950.265—Upon award of a construction contract, execution of a contract of sale, or start of construction, an IHA notifies HUD and submits a revised development cost budget, and a certification that all ACC, statutory, and regulatory requirements have been met. If requested, an IHA shall submit copies of construction plans and specifications, the construction or contract of sale, detailed plans for Force Account construction management, notice to proceed, or other applicable contracting documents. These items are necessary to allow HUD to monitor the compliance of IHAs with the ACC and related regulatory requirements for contracting. (Current OMB Number 2577–0039, expires 5/31/95; 2577–0011, expires 8/31/96; 2577–0015 expires 8/31/95; 2577–0027, expires 7/31/96; 2577–0037, expires 3/31/97.)

(E) Section 950.270—When the IHA accepts all or any part of a project, notification shall be provided to HUD. When all units are accepted by the IHA, the IHA shall notify HUD of the date the units were available for occupancy by the residents. At the end of the rent-up period the IHA shall notify HUD.

(E) Section 950.285—Upon completion of development and payment of all debts to contractors and suppliers, an IHA shall submit a certificate of actual development cost and audit verification of expenditures. This requirement allows HUD to close the development grant. (Current OMB Number 2577–0036, expires 5/31/96.)

(E) Section 950.301(a)—IHAs must adopt and promulgate written policies for admission of participants. The policies shall cover all programs operated by the IHA. A copy shall be posted prominently in the IHA's office for examination by prospective participants. (2577–0003 at OMB for review and approval.)

(E) Section 950.308(a)—IHAs must submit a plan to the local Office of Native American Programs for approval prior to allowing the admission to Indian housing of police officers and other security personnel who are not otherwise eligible for such housing under any other admission requirements or procedures. The Plan must identify total number of units, location of units to be occupied, amount of rent to be paid, extent of the crime problem, and the benefits to the community and the IHA. (Current OMB Number 2577–0185, expires 3/31/96)

(E) Section 950.335—Each IHA shall establish and adopt, written policies sufficient to assure the prompt payment and collection of rent and homebuyer payments. A copy of the written policies shall be posted prominently in the IHA office.

(E) Section 950.340—Each IHA shall adopt grievance procedures that are appropriate to local circumstances and shall assure that tenants and homebuyers of these procedures.

(E) Section 950.345(a)—Each IHA shall adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and tenants. A copy of such policies shall be posted prominently in the IHA office.

(E) Section 950.360(a)—Each IHA shall adopt written policies with respect to the IHA's own employment practices. A copy of these regulations shall be posted in the IHA office.

(E) Section 950.416(C)—Each IHA shall maintain a waiting list, separate from any other IHA waiting list, of families that have applied for MH housing and meet the admission requirements. The IHA shall maintain a Mutual Help waiting list in accordance with requirements prescribed by HUD and shall make selections in the order in which they appear on the list.

(E) Section 950.422(a)—The IHA must notify the homebuyer in writing, once all requirements for occupancy have been met, that the home is available for occupancy as of a date specified in the notice.

(E) Section 950.428(a)—Each IHA shall establish and adopt written policies to assure full performance of the respective maintenance responsibilities of the IHA and homebuyers in the Mutual Help Program. A copy of such written policies shall be posted in the IHA office and provided to an applicant or homebuyer upon entry into the program.

(E) Section 950.428(c)—The IHA shall enforce the provisions of a Mutual Help Occupancy (MHO) Agreement for homebuyer maintenance of the home. The IHA shall conduct a complete interior and exterior examination of each home on a schedule developed by the IHA that ensures that the home is maintained in decent, safe, and sanitary condition and shall furnish a copy of the inspection report to the homebuyer. (OMB Number 2577–0114, expired 8/31/93)

(E) Section 950.432(a)—An IHA shall prepare an operating budget and approriate documentation. (OMB Number 2577–0026, expires 10/31/97)

(E) Section 950.446(a)—In the event the homebuyer fails to comply with any of the obligations of the MHO Agreement, the IHA may terminate the MHO Agreement by written notice to the homebuyer, enforced by eviction procedures applicable to landlord-tenant relationships. (OMB Number 2577–0114)

(E) Section 950.452(a)—Each IHA shall provide an annual statement to the homebuyer that sets forth the credits and debits to the homebuyer equity accounts and reserves during the year and the balance in each account at the end of each IHA fiscal year. The statement shall also set forth the remaining balance of the purchase price. (OMB Number 2577–0114)

(E) Section 950.455(a)—IHAs may apply to the local Field Office of Native American Programs for approval to convert any or all of the units in an existing rental project to the MH program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interest, evidence units are habitable, and financial feasibility.

(E) Section 950.458(a)—IHAs may apply to the local Field Office of Native American Programs for approval to convert any or all Mutual Help project units to the rental program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interst, and financial feasibility.

(E) Section 950.480 and Section 950.485—The Self-Help Agreement, executed by the IHA and the families in a group selected by the IHA to participate in a Self-Help Program, will be contingent upon HUD's approval of the development program. The application for a Self-Help development method of Mutual-Help project shall comply with the general requirements of Section 950.225. (OMB Number 2577–0112, expired 6/30/93)

(E) Section 950.495—If the participating family fails to provide its labor contribution, as required in accordance with its agreement, the IHA shall declare the family in default and terminate its participation in the project. The IHA selects an alternate family to take over responsibilities of the terminated family. After counseling, the IHA shall declare the families in default and convert the project to a regular Mutual Help project. The IHA's plan for completing the project shall be submitted to HUD for review and counsel prior to terminating the SH project.

(E) Section 950.503—An IHA may apply to the local Field Office of Native American Programs for approval to convert any or all of the units in an existing Turnkey III development to the rental or MH program. The request must contain information demonstrating legal sufficiency, Tribal acceptance, demonstration of family interest, and financial feasibility.

(E) Section 950.517—The IHA shall establish and maintain a separate Earned Home Payments Account (EHPA) for each homebuyer. The IHA shall provide an annual statement to each homebuyer specifying the amounts in the EHPA. Any maintenance or repair done on the dwelling by the IHA which is chargeable to the EHPA shall be accounted for through a work order, a copy of which shall be sent to the homebuyer.

(E) Section 950.519(a)—The IHA shall establish and maintain a separate Nonroutine Maintenance Reserve (NRMR) for each home, using a portion of the homebuyer's monthly payment.

(E) Section 950.529—In the event a homebuyer should breach the Homebuyer Ownership Opportunity Agreement by failure to make the required monthly payment or other documented reasons, the IHA may terminate the agreement 30 days after giving the homebuyer written notice of its intention to do so.

(E) Section 950.618—IHAs must consult with local officials and residents/homebuyers and develop an application for obtaining approval of a modernization program. IHA's must respond in writing to residents, resident organization, or RMC, indicating its acceptance or rejection of resident recommendations. (Current OMB Number 2577–0044, expires 1/31/96)

(E) Section 950.651—For each six month period until completion of a modernization program or expenditure of all funds, an IHA shall submit a report to the local Field Office of Native American Programs (FONAP). The report shall include obligations and expenditures, progress against the approved schedule and management improvement progress where applicable. (Current OMB Number 2577–0044, expires 1/31/96)

(E) Section 950.669—In its first year of participation in the Comprehensive Grant Program (CGP), each IHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning IHA and development characteristics, so that HUD can develop the IHA's annual funding allocation under CGP. (Current OMB Number 2577–0157, pending OMB review and approval)

(E) Section 950.672—An IHA is required to develop, implement, monitor and annually amend portions of its Comprehensive Plan in consultation with residents of the developments covered by the Comprehensive Plan and with democratically elected resident groups. Annually, the IHA shall submit to HUD, with its Annual Submission, an update of its Five-Year Action Plan, eliminating the previous year and adding an additional year. (OMB Number 2577–0157, pending OMB review and approval)

(E) Sections 950.675, 950.678, 950.684, 950.687—IHAs submit Comprehensive Plan (including the Five-Year Action Plan), or any amendment to the plan for HUD review and approval. IHAs submit documents which include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, IHA Board Resolution, materials demonstrating the partnership process, and any other documents as prescribed by HUD. The IHA shall submit a Performance and Evaluation Report in a form and at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. (OMB Number 2577–0157)

(E) Section 950.720—In determining the PFS operating subsidy, units shall not be included in the calculation of unit months available. Units approved for deprogramming shall be listed by IHA and supporting documentation regarding direct costs attributable to such units. IHA shall submit a certification with its PFS calculation that the units are being used for the purpose for which they were approved and that rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The IHA shall maintain specific documentation of the units covered, i.e., listing of units and project/management control numbers. (Current OMB Number 2577–0071, expires 5/31/97)

(E) Section 950.730—IHAs that are eligible for adjustments may only make a request for such adjustments at the time it submits the operating budget for the first budget year under PFS. A request under this paragraph shall include a calculation of the amount per-unit per-month of requested increase in the Base Year Expense Level, and shall show the requested increase as a percentage of the Base Year Expense Level. (Current OMB Number 2577–0071, expires 11/30/97)

(E) Section 950.770—An IHA may prepare and submit a Comprehensive Occupancy Plan (COP) to HUD. The COP shall provide a general IHA-wide strategy for returning to occupancy or deprogramming all vacant units and a specific strategy for returning to occupancy or deprogramming units for each project that has an occupancy percentage of less than 97 percent.

(E) Section 950.805—All IHAs shall complete an energy audit for each IHA-owned project under management. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the IHA. A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective. (OMB Number 2577–0062, pending reinstatement)

(E) Section 950.923 and Section 950.931—IHAs shall submit its demolition or disposition application to HUD in accordance with Section 18 of the United States Housing Act of 1937. The application shall include complete documentation that all requirements have been met; written documentation that resident management corporation, resident organization and resident cooperative of the affected development have been apprised of their opportunity to purchase. (Current OMB Number 2577–0075, expires 4/30/97)

(E) Section 950.935—Replacement Housing Plan. (Current OMB Number 2577–0075, expires 4/30/97)

(E) Section 950.964—An IHA shall provide the residents or any resident organization with current information concerning the IHA's policies on resident participation in management. The IHA and Resident Organization shall put in writing their understanding concerning the elements of their relationship. A management contract between the IHA and a RMC is required for resident management. Section 950.988 Each IHA receiving a grant shall submit to the Area ONAP annual progress report describing and evaluating the use of grant amounts

received under this program. (Current OMB Number 2577–0087, expires 1/31/96)

(E) Section 950.1005—In developing a proposed homeownership plan, and in carrying out the plan after HUD approval, the IHA shall consult with residents of the development involved, and with any resident organization that represents them, as necessary and appropriate to provide them with information and a reasonable opportunity to make their views and recommendations known to the IHA. (Current OMB Number 2577–0201, expires 5/31/97)

(E) Section 950.1017—The IHA shall be responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the homeownership plan. (Current OMB Number 2577–0201, expires 5/31/97)

(E) Section 950.1020—Content of homeownership plan. Section 950.1021—Supporting documentation. (Current OMB Number 2577–0210, expires 5/31/97)

(E) Section 950.3011—An IHA shall have a HUD-approved Action Plan that complies with specific requirements to participate in the Family Self-Sufficiency Program. Section 950.3030 Each IHA that carries out an FSS program shall submit to HUD a report regarding its FSS program as outlined in this section. (OMB Number 2577–0178, expires 6/30/95)

OMB Approval Number 2577–0130 was allowed to expire off the inventory inadvertently. HUD was in the process of drafting, clearing and publishing a Proposed Rule which allowed the public to comment on changes in the Indian Housing Program. A Final rule was published on April 10, 1995 (copy attached). HUD is requesting in this justification that that OMB Approval Number be reinstated. This reinstatement will cancel the following OMB Approval Numbers: 2577–0076, 2577–0030, 2577–0032, 2577–0031, 2577–0185. The burden hours associated with these numbers have been included in Item 12 of this justification. It is HUD's intend to incorporate all the information collection for this Rule under one OMB approval number 2577–0130. Burden hours have been calculated for each section of the Rule.

2. The information will be provided by IHAs and used by HUD in monitoring administrative capability, procurement procedures required by 24 CFR 85.36, funding eligible applicants for project development, approving development cost budgets, contract administration, certifications/verifications, lease and grievance procedures, waiting lists, administration of Mutual Help Program, approving operating budgets, funding Comprehensive Improvement Assistance and Comprehensive Grant Programs, statutory compliance to conduct energy audits, approving demolition/disposition requests, Homeownership and Family Self-Sufficiency Programs. Information is submitted one-time or annually.

3. There has been no consideration of information technology to reduce the burden.

4. The information collected does not reflect any duplication of effort since information provided must be updated annually by the Indian housing authority so that requests for funding can be reviewed annually based on current information.

5. The collection of information does not have an significant impact on a number of small businesses or other small entities.

6. The information collection must be conducted and could not be collected less frequently than one-time or annually. Most of the information requires IHAs to prepare applications, proposals to be approved for grant funding on a fiscal year basis.

7. The information collection is not to be conducted in a manner inconsistent with the general information collection guidelines in 5 CFR 1320.6.

8. HUD consulted with the National American Indian Housing Council, regional IHA associations, its six Native American Program Area Offices, and other IHA representatives on the structure of this Program. The Proposed Rule stage allowed for additional public comments to be submitted to HUD for review and consideration.

9. HUD does not require an assurance of confidentiality provided to respondents.

10. HUD does not ask any questions of a sensitive nature.

11. There is no cost to the Federal Government and respondents.

12. The reporting burden calculation is attached.

13. There has been a significant decrease in the number of burden hours on the Indian housing authority (IHA) with the publication of this regulation. For IHAs with administrative capability, document submission such as development programs and operating budgets have been eliminated from this rule. Also, only those IHAs with a corrective action order are required to submit a management improvement plan. Similar decreases have taken place throughout the rule with an emphasis on paperwork reduction.

14. These information collections will not be published.

12. The following estimates are provided for the information collection burden associated with the reporting and recordkeeping burden for this rule:

Descpt. of information collection	Section of 24 CFR affected	No. of respdts.	Total annual respns.	Hrs. per respns.	Total hours
Management Improvement Plan Reqs	950.135 (e) (f) and (g)	60	1	24	1,440
Maintain Procurement Records	950.160(a)(4)	191	.....	.30	57
Adopt & Submit Procurement Rules	950.160(b)	191	1	8	1,528
Preference Requirements	950.175	1,815	1	1.8	2,945
Development Application Requirements	950.215 950.225 950.230 950.231	130	1	8	1,040
Development Cost Budget	950.229	130	1	12	1,560
Environmental Review Documents	950.247	130	1	4	520
Preliminary Site Report	950.250(a)	130	1	5	650
Contract Documents, Plan, Specs. Notice to Proceed etc	950.265	130	1	40	5,200
Notification to HUD Units Available for Occupancy; Rent-up Period	950.270	130	1	3	390
Certificate Actual Development Costs	950.285	130	2	8	2,080

Descpt. of information collection	Section of 24 CFR affected	No. of respdts.	Total annual respns.	Hrs. per respns.	Total hours
Resident Participation in Management; Contract; Grantees Report	950.964	60	2	30	3,600
Homeownership Plan; records; Documentation	950.1005 950.1017 950.1020	15	1	16	240
Action Plan Family Self Sufficiency; Reporting	950.3011	10	1	16	160
Total Reporting Burden					69,426

BILLING CODE 4210–33–M

Preliminary Site Report by Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

DRAFT

OMB Approval No. 2577-0031 (Exp. 4/30/95)

Public Reporting Burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0016), Washington, D.C. 20503. Do not send this completed form to either of these addresses.

Prepare and submit an original and two copies of this report and any attachments.

1. Name of IHA

2. Report Number_____ of _____ Reports for PROJECT NUMBER _____.

3. Number of Units
   a. Elderly
   b. Nonelderly
   c. Total

4. Production Method
   a. ☐ Conventional c. ☐ Acquisition
   b. ☐ Turnkey d. ☐ Force Account

2. Program Type
   a. ☐ Mutual Help
   b. ☐ Rental

6. Date of IHA Site Inspection

7. Site Location

8. Congressional District

9. Census Enumeration District

10. Type of Site
   a. ☐ Multiunit
   b. ☐ Scattered

11. Assumed Building Types
   a. ☐ D d. ☐ AW
   b. ☐ SD e. ☐ AE
   c. ☐ R

12. Area of Site
   a. In acres_____
   b. In sq. ft._____

13. Tentative Gross Density
   _____ DU's/Acre

14. Land Status:
   a. (1) ☐ Trust or Restricted (2) ☐ Unrestricted
   b. (1) ☐ Tribally Owned (2) ☐ Individually Owned
   For individually owned trust or restricted land, attach a written assurance from the BIA as to the timely execution of losses.

15. Zoning:
   Identify existing zoning for the site _____;
   if unsuitable, identify zoning required and source of official assurance

DRAFT

16. Demolition:
   a. ☐ None involved
   b. ☐ Dwelling Units (Estimated No. of DU's_____)
   c. ☐ Nondwelling Structures

17. Relocation
   a. ☐ No Displacement b. ☐ Temporary Displacement c. ☐ Permanent Displacement

18. Physical Characteristics: Describe briefly the nature of the site as to topography, subsurface conditions, flooding and relating site selection criteria (Chapter 3 of the Handbook), including those identified below, and note any anticipated problems with respect to obtaining compliance therewith:

a. Indicate the % of area for each site with grades 0 to 5%, 6 to 10%, 11 to 15%, 16% and above:

b. For low-lying and flat-sites, indicate level of rainfall:

c. Describe known subsurface conditions. Where any problems are known to exist, describe the results of the preliminary examination indicating that the adverse conditions can be overcome:

d. Does the site lie within one area identified by HUD as having special flood hazards?

e. State whether the hazard of earthslides exists either on the site or on adjacent or nearby land:

f. State site's exposure to noise (attach letter of advice, if appropriate) and to earthquakes:

g. Other Comments:

form **HUD-3188** (02/17/93)

Program Number:

19. Utilities: Check the utilities proposed for the site and provide information as indicated for each type of utility. Explain how each utility will be provided, including, as applicable, how each extension will be obtained and financed. Attach written assurances in accordance with the Handbook.

Service	On-Site	Off-Site	Size	Distance To Site	
a. Access Roads				_____ Ft.	
b. Sanitary Sewer				_____ Ft.	
c. Water				_____ Ft.	
d. Gas				_____ Ft.	
e. Electricity				_____ Ft.	
f. Storm Sewer				_____ Ft.	
g. ☐ Bottled Gas	h. ☐ Fuel Oil			i. ☐ Coal	
j. ☐ Wood	k. ☐ Other (Identify)				

20. Locality Map: Attach a map of the locality, locating the sites. Locate on the map existing and proposed facilities, including (a) the principal industrial, commercial, or other areas providing employment opportunities for prospective residents, (b) public schools service the project neighborhood, (c) public transportation lines, (d) neighborhood shopping facilities, and (e) available social, recreational and health facilities and services.

21. Plat: Attach a plat showing site boundaries; parcel ownership; use of adjacent property; access roads and boundary streets, indicating names, width of rights of way and type of surfacing. Where applicable, label unimproved. Include information sufficient to show the specific location of the site in relationship to the nearest points of reference.

22. Alternate Sites: If alternative sites have been or are able to be submitted, identify all sites and indicate order of preference among the alternatives.

23. Area of Site	Square Feet	Acres
a. Area to be leased		
b. Area to be purchased		
c. Area to be donated		
d. Area to be vacated		
e. Total to be acquired		

Number of Parcels		
Vacant	Improved	Total

24. Estimated Site Costs	
a. Surveys and Maps	$
b. Appraisals	
c. Title information	
d. Option negotiations	
e. Relocation of site occupants	
f. Acquisition	

Program Number:

25. Parcels Comprising Site (Place an * by Parcel Number where MH land contribution is involved.)

Parcel Number	Street Address of Parcel	Area (Sq.Ft.)	Improvement		Asking or Listing Price (If known)
			Type	Condition	

Project Number:

26. IHA remarks: State reason for recommending exclusion of any parcel from site; acquisition difficulties; and conditions, if any, for recommendation of site approval. In addition, cite any local or regional plans, including tribal plans which served as the basis for selecting the site proposed.

Site Approval Recommended and Required:

Date	Executive Director	Signature of Executive Director

27. IHS and BIA Recommendations: Where required by the Regulations and the Handbook, the signature of the appropriate official of the BIA aand IHS, with title and date indicated, shall be obtained by the IHA in the appropriate space provided below of, if preferred, in an attached letter from these agencies. The IHA shall ensure that modifications, conditions, comments findings and statements provided by these agencies in accordance with the Regulations and the Interdepartment Agreement are either stated below or in the letter attachment.

Recommendations - Insert signature, title, date and comments in the appropriate column.

	Approval as Submitted	Aprroval Modifications	Conditional Approval	Disapproval
BIA				
IHS				

Program Number:

The following is to be completed by the HUD Field Office

1. Interagency Coordination:

a. Environmental Clearances: From BIA, dated _____: From IHS, dated _____.

b. Site Inspection:	Date	Signature of Appraiser
☐ Made, dated_____: ☐ Not required based on BIA and IHS certification		

2. Recommendations: Insert signature and date in the appropriate column; attach comments; signature indicates that stated BIA and IHS concerns have been considered and are reflected.

Reviewer	Tentative Site Approval Recommended			Disapproval	Reservations or Conditions Satisfied
	As Submitted	With Modifications	Conditional Approval		
Appraiser					
Environmental Clearance Officer					
Chief, Valuation					
CPD					
EMAD					
HM					
Counsel					
MHR					
Director, HPMC					

3. Date IHA advised of Review	4. Date of Final Site Approval
Results _____	

Indian Low Income Housing Programs Application by Indian Housing Authorities

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0030 (Exp. 2/28/97)

Public reporting burden for this collection of information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0030), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

This application form is for use only by an Indian Housing Authority applying for housing assistance pursuant to the United States Housing Act of 1937. Submit an original and two copies of this application form and any attachments.

Program Reservation Number: **Internal Use Only**

Name of Indian Housing Authority:	Number of Low-Income Units for which assistance is applied:	Program Reservation Amount Requested: $
Legal Area of Operation:		Amount of Request Intended for Off-Site Water & Sewer Improvements $
Mailing Address of the Indian Housing Authority:	Name & Address Tribe or Governing Body:	

A. Location of Proposed Project (Dwelling Units)

Locality (Community)	Reservation and/or County	Congressional District	Number of Units Proposed

B. Proposed Program Type and Production Method

1. Program Type: (Select one per application.)
- ☐ Mutual-Help Homeownership Opportunity
- ☐ Rental

2. Production Method: (Identify the preferred method for this application.)
- ☐ Turnkey
- ☐ Conventional
- ☐ Acquisition
- ☐ Force Account
- ☐ Modified Turnkey
- ☐ Self-Help

C. Anticipated Dwelling Unit Characteristics

Building Type	Number of Bldgs.	Number of Delling Units By Bredroom Size: Elderly, Handicapped or Disabled: Effic.	1-BR	2-BR	Non-Elderly: 1-BR	2-BR	3-BR	4-BR	5-BR	Total No. of Dwelling Units
Detached										
Row										
Totals										

D. Land Status (Location of proposed project(s))
- ☐ On Reservation
- ☐ Trust or Restricted Land
- ☐ Off Reservation
- ☐ Unrestricted Land
- ☐ Tribally Owned
- ☐ Land to be Purchased
- ☐ Individually Owned
- ☐ Land to be Leased

E. Need Totals from waiting lists as determined by applications on file:

MH: LR:

F. Compliance with Section 213

Check one of the following with regard to Section 213 of the Housing and Community Development Act of 1974:
- ☐ In compliance with Section 213 of HCD Act of 1974. Attach a letter of support from the CEO of the local governing body or tribe.
- ☐ Not in compliance with Section 213 of HCD Act of 1974. If this box is checked, attach statement explaining reason.

form **HUD-52730** (5/94)

G. New Housing Development Certifications

General Instructions: The Certifying Representative of the applicant, in signing and dating the application below, is also certifying to the following:

The Applicant hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally assisted program. Also, the Applicant gives assurance and certifies with respect to the application that:

A: The appropriate governing body has duly authorized the filing of this application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

B: It will administer and enforce the labor standard requirements prescribed by existing regulations.

C: It will adhere to 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973.

D: It will adhere to the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970 as amended.

E: It will adhere to the Uniform Accessibility Standards/Architectural Barriers Act of 1968.

F: For IHAs established under State law, that no Federal appropriated funds will be used for lobbying purposes.

G: Where applicable, and only for IHAs established under State law, that a statement disclosing lobbying activities using other than Federal appropriated funds has been completed.

H: For Mutual Help Programs, financial feasibility has been determined by the IHA based upon signed applications as noted in HUD Handbook 7450.1.

I. For low rent programs the IHA has reviewed the estimated income and expenses for the development and certifies to the financial feasibility of the project.

J. That the Tribal Ordinance has not been modified or altered since the date of the last submission to HUD or a copy of any modifications are submitted with this application.

Title & Signature of IHA Authorizing Official & Date:

X

Approved Signature of Field Office Administrator & Date:

X

Development Program for Indian Housing Authority

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

Copy No.:

OMB Approval No. 2577-0032 (exp. 8/31/95)

Public Reporting Burden for this collection of information is estimated to average XXXX per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600; and to the Office of Management and Budget, Paperwork Reduction Project (2502-0032), Washington, D.C. 20503. Do not send this completed form to either of these addressees.

This form is used for the submission of a Development Program in accordance with the Indian Housing Regulations and Handbook. It is applicable to rental and Mutual Help projects to be developed under the conventional, turnkey, acquisition or force account production methods. Part 1 of the Development Program relates to development data; Part 2 to project feasibility.

Submit an original and 8 copies to HUD. All attachments should be identified by Part, Subpart and Item Number.

A Development Program should cover all housing to be built under a single construction contract/contract of sale, whether on one or several sites.

Project Number :	Total No. of Dwelling Units :	Program Reservation Number :	Program Type : ☐ Rental ☐ Mutual Help
Project Location :			Production Method : ☐ Conventional ☐ Acquisition ☐ Turnkey ☐ Force Account

This Development Program has been adopted by Resolution No.: _____
of (Legal name of Indian Housing Authority): _____
and is hereby submitted to serve as the basis for an Annual Contributions Contract with a total development cost of $_____

Signature :	Title :	Date :
X		

HUD Field Office Recommendations

Signatures:	**Recommendation Date:**
Director, Equal Opportunity Division	
Counsel	
Director, Economic and Market Analysis Division	
Director, Housing Management Division	
Director, Community Planning and Development Division	
Chief, Architectural Staff	
Chief, Cost Staff	
Multifamily Housing Representative	
Financial Analyst	
Housing Production Manager / Director	

Approved:

Program Director's Signature & Title :	Date

form **HUD-53045** (1/01/93)
ref. Handbooks 7440.1 & 7450.1

Part 1 - Development Data

Subpart 1A - Budget and Supporting Cost Data (eight items)

The Development Cost Budget is included at the end of this form and must be used for the submission of all Indian housing development cost budgets; i.e., development program; between development program and contract award; between contract of sale and final; and final. Instructions are included for preparing the budget.

Provide supporting data for the cost estimates indicated.

Figures shown in the following example are for a hypothetical project of 120 units in three building types and including 32 designated for the elderly.

1. Development Cost Budget. Complete columns 5 and 6 **only** of form HUD-53045-A.

2. Supporting Data for Cost Estimates. Attach supporting data for Accounts 1410.1 (Nontechnical Salaries), 1410.2 (Technical Salaries), 1410.19 (Sundry), 1430.2 (Consultant Fees), 1430.7 (Inspection Costs), 1465 (Dwelling Equipment), 1475 (Nondwelling Equipment), 1495 (Relocation). For turnkey projects, include a breakdown of "Other" in the Developer's Price to show:

a. Developer's Fee and Overhead, exclusive of builder-contractor's overhead and profit which is in other items of the developer's price.
b. Interim Financing.
c. Closing Costs.

3. Dwelling Buildings and Units.

a. Complete the table below using the sample shown below.
b. Identify and describe briefly on an attachment:
(1) The number of units in this project which will be used as a necessary resource for relocating site occupants and indicate the number of these units for nonelderly occupancy and the number designed for elderly occupancy.
(2) Any units industrialized, factory fabricated, or component construction.
(3) Any units for congregate housing, or occupancy by the elderly, or to be developed through rehabilitation of existing structures.

Schedule of Buildings and Units

Building Type	Number of Stories	Number of Buildings	Number of Units by Room Count 3	3 1/2	4 1/2	5 1/2	6 1/2	7 1/2	8 1/2	Number of Rooms	Number of Units
W	6	1		42 (22)	2(2)	36				354	80(24)
R	1	3		4(2)	6(6)	6				74	16(8)
D	1	20					4	6		152	24
AE											
Total		24		46(24)	8(8)	54	4	6		580	120(32)

3. Schedul of Buildings and Units.

Building Type (1)	Number of Stories	Number of Buildings	Number of Units by Room Count (2) & (3) 3	3 1/2	4 1/2	5 1/2	6 1/2	7 1/2	8 1/2	Number of Rooms	Number of Units
Total											

(1) W = Walk-up; R = Row; D = Detached; AE = Apartment Elevator.

(2) Number of Bedrooms plus 2 1/2 per unit.

(3) Show first, total units for each building type; second, in parentheses, show elderly units.

4. HUD Total Development Cost (TDC) Standard Cap Calculate the TDC Standard Cap in the table below.The following example shows computation of Project TDC Standard for the above hypothetical project.

Indian Housing TDC Standards specify:

a. a geographical area with a defined boundry
b. a type of construction (detached/duplex, row, or walk-up)
c. a specific number of bedrooms included in the design
d. a dollar amount expressed as total development cost or TDC per unit

A published TDC figure rpresents the TDC for one unit of a certain type of construction with a certain number of bedrooms in a certain location.

The TDC Standard for an Indian housing project depends upon the distribution of units within the project and may be calculated as in the following example:

The TDC Standards for 2, 3 and 4 bedroom detached housing units in Indian Standard Area X are $50,000., $60,000., and $70,000., respectively. There are 10 two bedroom units, 20 three bedroom units and 30 four bedroom units.

10 x $ 50,000. = 500,000.
20 x $ 60,000. = 1,200,000.
30 x $ 70,000. = 2,100,000.
} = Project TDC ($ 3,800,000)

The TDC Standards are to be used as guidelines for field office lattitude in the funding of Indian housing projects. **They do not determine an entitlement.**

An Indian housing project is cost approvable when:

a. the TDC is reasonable, and
b. each line item on the standard development budget is rasonable, and
c. a standard breakdown of th dwelling construction line item is reasonable.

If any of the above three components are non-approvable, the entire project is not cost approvable.

"Reasonable" cost is aperationally defined as cost that is consistent with current MIRS cost data on file in the field office.

TDCs do not include off-site water and sewer in these calculations or cost comparisons.

Total Development Cost Standard Cap

IndianStandard Area: Sacaton, Arizona*

Type	0 Bedroom Unit 3 Rooms	1 Bedroom Unit 3 1/2 Rooms	2 Bedroom Unit 4 1/2 Rooms	3 Bedroom Unit 5 1/2 Rooms	4 Bedroom Unit 6 1/2 Rooms	5 Bedroom Unit 7 1/2 Rooms	6 Bedroom Unit 8 1/2 Rooms	TDC
W	(1) (2)	42 32,675	2 41,031	38 46,845				82
	(3)	1,372,350	82,062	1,751,220				3,205,632
R		4 34,263	6 42,159	8 50,267				18
		137,052	252,954	401,802				891,808
D			12 [illegible]	12 [illegible]	4 66,784	8 74,186		24
			[illegible]	[illegible]	267,056	593,328		1,526,192
AE								
		46	8	84	4	8		120
Total	1,509,402	135,816	2,716,830	267,056	593,328			5,423,432

(1) Enter the number of units by bedroom count and type.
(2) Enter latest TDC Cap per unit per latest HUD Instructions
(3) Enter product of (1) and (2).
* Locality shown in HUD Instructions for which TDC standards costs have been used.

4. Total Development Cost Standard Cap

IndianStandard Area:

Type	0 Bedroom Unit 3 Rooms	1 Bedroom Unit 3 1/2 Rooms	2 Bedroom Unit 4 1/2 Rooms	3 Bedroom Unit 5 1/2 Rooms	4 Bedroom Unit 6 1/2 Rooms	5 Bedroom Unit 7 1/2 Rooms	6 Bedroom Unit 8 1/2 Rooms	TDC
W								
R								
D								
AE								
Total								

5. IHA Estimate of Dwelling Construction and Equipment Cost. The cost of dwelling construction and equipment will be taken from Item 1 (Development Cost Budget), Subpart 1 - Budget. For turnkey projects, the DC&E will be the sum of the amounts shown in Accounts 1460 and 1465 (line numbers 3 and 4) under Developer's Price plus the amount, if any, shown in Account 1465 (line number 52) under Indian Housing Authority Costs. For conventional projects, the cost of DC&E will be the sum of the amounts shown in Accounts 1460 and 1465 (line numbers 51 and 52) under IHA Costs.

The cost per square foot is the total cost divided by gross area.

The gross area of dwelling space based upon schematic plans supporting this budget should be computed in accordance with the following:

a. The gross area of a building is the sum of the areas of the several floors of the building, classified as dwelling space, including basements, mezzanines, and penthouses of headroom height, measured from the exterior faces of exterior walls or from the center line of walls separating buildings.

b. For porches with roofs connected with a building, access galleries, balconies, and similar spaces, include in the computation of gross area one-half of the actual gross area.

c. Do not include in the gross area features such as pipe trenches, open terraces or steps, chimneys, roof overhangs, or covered outdoor sitting areas connected with a building.

d. Areas of public spaces, such as corridors, stairs, elevator shafts, etc., serving more than one use, e.g., dwelling, maintenance, management, and community, shall be distributed in proportion to the area of the uses served.

6. Total Development Cost Standard Comparison Percentage. Self-explanatory.

7. Area of Nondwelling Building and Spaces. See instructions for item 5. Nondwelling space will be all of the total gross area of a structure not classified as dwelling space. List appropriate net and gross square footage in the appropriate spaces provided.

8. Demonstration of Adequacy of Resaources and Relocation Plan. Self-explanatory.

5. IHA Estimate of Dwelling Construction & Equipment Cost.

a. Nonelderly	Dwelling Construction Cost		$	
No. of Units :	Dwelling Equipment Cost		$	
		Subtotal	$	
	Contingency: ( ) percent		$	
		Total		$
	Estimated gross area of nonelderly dwelling space			
	Cost per square foot of dwelling space	$		
b. Elderly	Dwelling Construction Cost		$	
No. of Units :	Dwelling Equipment Cost		$	
		Subtotal	$	
	Contingency: ( ) percent		$	
		Total		$
	Estimated gross area of elderly dwelling space			
	Cost per square foot of dwelling space	$		
c. Total	Dwelling Construction Cost		$	
Total No. of units :	Dwelling Equipment Cost		$	
		Total DC & E (elderly & nonelderly)		$
	Estimated gross area of total dwelling space			
	Cost per square foot of dwelling space	$		
d. Amount of Total DC & E which is attributable to MH Contributions of work, materials or equipment				$

6. TDC Standard Comparison Percentage

a. Total Project TDC Cap (from item 4 above)	TDC = $	
b. Total DC & E Cost Estimate (from item 5c above)	PPC = $	
c. Comparison Percentage	$\frac{PPC}{TDC}$ =	%

7. Areas of Nondwelling Buildings or Spaces

	Net Sq.Ft.	Gross Sq.Ft.
a. Administrative Buildings or Spaces		
b. Maintenance Buildings or Spaces		
c. Community Buildings or Spaces		
d. Central Dining Facilities		

8. Demonstration of Adequacy of Relocation Resources and Relocation Plan (if applicable).

See HUD Relocation Handbook 1371.1 and Indian Housing Handbook.

Subpart 1B. Final Site Approval (three items)

For MH project, in order for the IHA to select homebuyers, obtain the required signed statements and properly complete the Table required by Part II, subpart B, Item 3, it will be necessary to obtain Final Site Approval before a complete Development Program can be submitted (Section 905.217 (b) and 905.406 (d) of the Indian Housing Regulations).

1. TSA Conditions Satisfied Attach any information not previously submitted to demonstrate that all conditions, if any, of tentative Site Approval have been met. Include a listing of all material which is attached or a statement that this is not applicable because no TSA conditions were imposed or that all required information was previously submitted. (The HUD Field Office will incorporate the Preliminary Site Report(s) upon which TSA was granted and any information received showing TSA conditions have been met.)

2. Evidence of Site Control Attach option or offer by owner to sell or lease the approved site to the IHA or other evidence of site control satisfactory to the HUD Field Office. The number of attachments and their identification are given below. (Where the IHA wishes to submit eviddence of site control other than options or offers by owners to sell or lease, the IHA should consult with the HUD Field Office to ascertain whether such evidence will be satisfactory.)

3. Area Map Attach an area map showing existing HUD-assisted low income housing by Project Number, other assisted housing (identify: Tribal, BIA, FmHA, etc.), sites proposed for this project, and locations of existing and proposed schools, employment, health, shopping, transportation, roads and water and sewage facilities. If such facilities are off the scale of the map, indicate on the map the distance to them. Indicate on the map the agency responsible for each facility. Indicate in a statement on the map if certain of these facilities are not available in the area (other than those required by the Indian Housing Regulations and the Handbook). (The Locality Map required by Item 20 of the Preliminary Site Report may be used, if appropriate, as the Area Map required by this Item 3. If the Locality Map is used, it should be revised and updated to provide current information as well as the additional information required by Item 3.)

Subpart 1C. Mutual Help Projects (three items)

For Mutual Help Projects only, provide, in addition to the information required in Part I (Subpart A) and Part II, the information required by this subpart C. Section 905.408 of the Indian Housing Regulations provides detailed instructions concerning this item. See also the case examples provided in Chapter 5 of the Indian Housing Handbook.

1. Counseling Program Attach proposed MH Counseling Program and a justification of its cost included in Budget Account 1418. If previously submitted, indicate here the date of the submission and, if received, the date of approval. If the Counseling Program is to be submitted at a later date, indicate the date by which it will be submitted. (which shall be no later than the submission of the working drawings and specifications).

2. Tribal Contribution If there is to be any MH Tribal Contribution, provide here a statement of the forms and amounts thereof and attach a copy of the required Tribal Resolution stating the tribe's commitment to the IHA to make the contribution on behalf of Homebuyers.

3. Required MH Contributions Attach a statement of:

a. The total amount of MH Contributions to the Project including any additinal amounts.

b. The portion of such total to be provided by each form of contribution (land, work, cash, materials, or equipment) and

c. The amount of non-land contribution per Homebuyer.

Part II. Project Feasibility

Subpart IIA. Rental Project

Section 905.220 of the Indian Housing Regulations requires that the financial feasibility test for a rental project, which must be met before a Development Program for the project can be approved, shall be the test applicable to projects subject to 24 CFR, Part 990.101, et.seq., (Performance Funding System). For a rental project the IHA shall complete in accordance with the Indian Housing Handbook, and attach , as Part II, Subpart A of the Development Program, form HUD-52720B, Worksheet ii; Averages, Square Roots and Formula Expense Level Equations, and all related forms necessary for its completion. In the case of IHAs in Alaska, the IHA may, in lieu of the above, attach documentation to indicate: (1) Estimated total dwelling rental income for the project for the first five fiscal years following the End of Initial Operating Period (EIOP) date will be equal to or greater than the estimated total operating expenditures for the same period; or (2) where the estimated total operating expenditures are greater than the estimated total dwelling rental income, information to indicate that the IHA's current Per Unit Month (PUM) operating subsidy eligibility is equal to or greater than the operating deficit (as a PUM), of the project. The Indian Housing Handbook provides additional information.

Subpart IIB. Mutual Help Projects

Estimates of operating expenses comprising the Administration Charge (as defined in Section 905.419(a) of the Indian Housing Regulations), as well as estimates of utility costs (Section 905.416 (b)), may be based on the operating experience of other similar projects of the IHA, provided such experience reflects efficient and economical operations. In the event that the IHA has no operating experience, the HUD Field Office, upon request, will supply comparable data from the experience of other IHAs or PHAs operating similar projects.

Section 905.404 of the Indian Housing Regulations requires that the Development Program for a MH project include a demonstration by the IHA that there is a sufficient number of selected Homebuyers who are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements and who have signed statements that they are willing to enter into MHO Agreements. The items herein shall be completed by the IHA to provide the requird demonstration. The IHA may attach any additional information it deems necessary to meet the required demonstration.

1. Estimate of MH Administration Charge The anticipated operating expenses shall be projected for the first full year following the estimated End of Operating Period (EIOP) date. The Per Unit Month amounts shall be entered in Column 1 and Annual Amounts in Column 2. Provide cost estimates for each of the following operating expense items which comprise the MH Administration Charge.

a. Administrative Expense. (Administrative salaries; travel; legal expense; postage; telephone and telegraph; office rent and overhead, incl. maintenance and utilities; and accounting services; etc.)	(PUM) (Col.1)
b. General Expense. (The cost of premiums for fire and other insurance; payment in liue of taxes, if any; payroll taxes; employee benefits; and collection losses; etc.)	
c. Contribution to Operating Reserve. (An estimate of the amount required to accumulate an operating reserve for the project as defined in Section 905.420 of the Indian Housing Regulations.)	
d. Total Administrative Charge. (Sum of the operating expenses in lines a, b, and c above.)	

2. Estimated Monthly Cost of Utilities Refer to the first paragraph of this subpart, IIB. Also see the schedules of rates, current and anticipated, provided with the required written assurances of the respective agencies or utility companies at the time of submission of the Preliminary Site Report and the Comparative Analysis of Utility Costs. Rates should be rechecked if necessary. Provide in the table below the estimated monthly cost of utilities by bedroom size which Homebuyers will be required to provide under the MHO agreement:

2. Estimated Monthly Cost of Utilities

Utility	Estimated Monthly Cost by Bedroom Size						
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6-BR
Water							
Electricity							
Gas							
Other heating (specify)							
Refrigeration							
Cooking fuel							
Sewerage services							

3. Data on Potential MH Homebuyer Families Complete the table below. The information to be provided in this table for each family shall be based on families who have been selected by the IHA, in accordance with Section 905.406 of the Indian Housing Regulations and who have signed statements that they are willing to enter into MHO Agreements. If more space is needed, make a duplicate copy of the table. By submitting this table the IHA certifies that these families are able and willing to pay the Administration Charge and meet the other obligations under MHO Agreements.

(1) Include income of all family members and all sources.

(2) State occupation of family members.

(3) This should be a statement of the amount of each form of M H Contribution provided by each family. The total of the amounts of each form of MH contribution shown for the family is not necessarily the same amount of MH credit to the family since the credits for contributed land are pooled and shared equally (Section 905.408 (c) (2)).

(4) This will be the amount of the Administration Charge from Item 1 or 25 percent of the Homebuyer's Family Income less the Utility Deduction, whichever is greater. (See Section 905.416 of the Indian Housing Regulations.)

(5) Enter from Item 2 the Estimated Utility Cost for the bedroom size unit required by the family.

(6) Enter an "X" in the column only where the family has been selected by the IHA under the "expected reasonably" provision under Section 905.406(b); i.e., if the Administration Charge plus utilities, or the Administration Charge alone, would exceed 25 percent of Family Income.
By placing an "X" in this column the IHA certifies that it has been determined that the family can be reasonably expected to pay the Administration Charge and meet its other obligations under the MHO Agreement, as demonstrated by the family's income, including public assistance, the family's past history, or the family's ability to supplement its income by providing its own food, fuel or other necessities.

3. Data on Potential MH Homebuyer Families (Table for Item 3)

Family	Is Family Head 62 or over? in Family	No. of Persons	Gross Family Income (1)	Source of Income (2)	Amounts and forms of MH Contributions (3)						Estimated Required Mo. Payment (4)	Family Est. Utility Cost (5)	"Reasonably Expected" Provision (6)
					Land	Work	Materials	Cash	Equipment	Total			

Development Cost Budget
Indian Low Income Housing Program
Copy Number

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0032 (exp. 8/31/95)

Legal Name of Indian Housing Authority:	Budget Submission Sequence. No:	Project Number:
Locality of Project (Site Address):	Production Method:	Program Type:

	Elderly	Nonelderly	Total
No. of Units:			

Status (Check one)

- ☐ Planning Budget
- ☐ Development Program (DP)
- ☐ Between DP & CA
- ☐ Contract Award/Contract of Sale (CA)
- ☐ Between CA & Final
- ☐ Final
- ☐ Quarterly Development Cost Statement
- ☐ Statement of Actual Development Cost (with ADCC)

Subpart I. Budget

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost Amount (3)+(4)	Total Development Cost Per Unit	Previously Approved Budget
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Developer's Price						
1	1440 Site					
2	1450 Site Improvement					
3	1460 Dwelling Construction					
4	1465 Dwelling Equipment					
5	1470 Nondwelling Construction					
6	1430.1 Architectural and Engineering Services					
7	Other					
8	1482 **Total Developer's Price**					
Indian Housing Authority Costs: Administration						
9	1410.1 Nontechnical Salaries					
10	1410.2 Technical Salaries					
11	1410.3 Work - MH Contribution					
12	1410.4 Legal Expenses					
13	1410.9 Employee Benefit Contribution					
14	1410.10 Travel					
15	1410.12 Publications					
16	1410.14 Membership Dues and Fees					
17	1410.16 Telephone and Telegraph					
18	1410.19 Sundry					
19	1410 **Total Administration**					
20	1415 **Liquidated Damages**					
21	1418 **Counseling Costs**					
Interest						
22	**Total Interest**					
23	1425 **Initial Operating Deficit**					
Planning						
24	1430.1 Architectural and Engineering Fees					
25	1430.2 Consultant Fees					
26	1430.6 Permit Fees					
27	1430.7 Inspection Costs					
28	1430.9 Housing Surveys					
29	1430.19 Sundry Planning Costs					
30	**Total Planning**					

	Date	Title
Submitted by (Signature)		
*Recommended by(Signature of Authorized Official)		
*Approved by (Signature of Authorized Official)		

DRAFT

DRAFT

Project Number:

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost		Previously Approved Budget
				Amount (3)+(4)	Per Unit	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Site Acquisition					
31	1440.1 Property Purchases (or Leases)					
32	1440.4 Surveys and Maps					
33	1440.5 Appraisals					
34	1440.6 Title Information					
35	1440.7 Site - MH Contribution					
36	1440.8 Legal Costs - Site					
37	1440.10 Option Negotiations					
38	1440.12 Current Tax Settlement					
39	1440.19 Sundry Site Costs					
40	**Total Site Acquisition**					
41	1450 Site Improvements					
42	1460 Dwelling Construction					
43	1465 Dwelling Equipment					
44	1470 Nondwelling Construction					
45	1475 Nondwelling Equipment					
46	1480 Contract Work In Progress					
47	1495 **Relocation Costs**					
48	**Total Before Contingency**					
49	**Donations**					
50	**Total Before Contingency (Excluding Donations)**					
51	**Contingency: 1% or 5% (or less) of line 50**					
52	**Total Development Costs**					

Project Number:

Subpart II. Detail of Construction and Equipment. Accounts 1450 through 1480.

Line No.	Account Classificaton	Actual Development Cost Incurred to	Actual/ Estimated Additional to Complete	Total Development Cost		Previously Approved Budget
				Amount (3)+(4)	Per Unit	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Site Improvement (1450)					
51	Demolition					
52	1450.1 Work-MH Contribution					
53	1450.2 Materials, Supplies and Equipment- MH Contribution					
54	1450.3 On-site Street Improvements					
55	1450.4 Other					
56	**Total Site Improvement**					
	Dwelling Structures (1460)					
57	1460.1 Work - MH Contribution					
58	1460.2 Materials, Supplies and Equipment- MH Contributions					
59	1460.3 Other					
60	**Total Dwelling Structures**					
	Dwelling Equipment (1465)					
61	1465.1 Dwelling Equipment Nonexpendable					
62	1465.2 Dwelling Equipment Expendable					
63	1465.3 Dwelling Equipment-MH Contribution					
64	**Total Dwelling Equipment**					
	Nondwelling Structures (1470)					
65	1470.1 Work-MH Contribution					
66	1470.2 Materials MH Contribution, Supplies & Equipment					
67	1470.3 Other					
68	1470.9 IHS Off-site Water & Sewer					
69	**Total Nondwelling Structures**					
	Nondwelling Equipment (1475)					
70	1475.1 Office Furniture and Equipment					
71	1475.2 Maintenance Equipment					
72	1475.3 Community Space Equipment					
73	1475.4 Computer Equipment					
74	1475.7 Automotive Equipment					
75	1475.9 Expendable Equipment					
76	1475.10 Nondwelling Equipment-MH Contribution					
77	**Total Nondwelling Equipment**					
	Contract Work In Progress (1480)					
78	1480.1					
79	1480.2					
80	1480.3					
81	**Total Contract Work In Progress**					
82	**Total Construction & Equipment**					

Subpart III. Cost of Relocation and Existing Improvements	
a. Acquisition Cost:	
b. Demolition Cost:	
c. Relocation Cost:	
d. Total:	

Subpart IV. Detail of Donations (Not MH Contributions) - Itemized		
Source of Funds	Account Number	Amount
1.		
2.		
3.		
4.		
	Total Donations	

Subpart V. Detail of MH Contributions

MH Contribution	Account	Amount	MH Contribution	Account	Amount
a. Total Cash			Materials	1450.2	
b. Total Land	1440.7			1460.2	
Work--Family	1450.1			1470.2	
	1460.1		e. Total Materials		
	1470.1		Equipment	1450.2	
c. Subtotal Family				1460.2	
				1465.3	
Work--IHA Cost	1410.3			1470.2	
d. Total Work				1475.10	
			f. Total Equipment		

Total MH Contributions (Sum of a, b, d, e and f above)	
Total MH Contributions of work, materials and equipment to be utilized by the Contractor in performance of the contract work (sum of c, e, f.) (Should equal the difference between Total Contract Price and the Price Payable to Contractor.)	
Total MH Cash Contribution to be applied toward payment of development cost (a, above)	

Instructions for Preparing Development Cost Budgets

A. General.

1. Prepare an original and two copies for all Development Cost Budgets required by the Indian Housing Handbook under the grant program. Submit to the HUD Field Office.

a. For the first budget (Planning Budget), complete only columns (4) and (5) of Subparts I & II.

b. For subsequent budgets, complete as described below .

c. Round off all amounts to the nearest dollar.

d. Where descriptions or supplementary data are required, use an attached sheet, identifying the applicable item.

2. Budgets should cover all of the housing to be built under a single project number, whether on one or several sites.

a. Show in the block at the topof page 1 of the Budget under "Budget Sub. No.' the sequential number of the Budget being submitted.

b. For any project, the Planning Budget is "budget No. 1" the next and suceeding budget submissions would be 2,3, etc.

c. Show in the block at the top of page 1 of the Budget under "Elderly", the total of all units designed specifically for the elderly including any such units which have more than one bedroom.

3. For descriptions of the cost accounts to be used, see HUD Handbook 7510.1, Low-Rent Housing Accounting Handbook. The HUD Field Office will assist IHAs upon request in the distribution of costs of individual accounts.

B. Subpart I. Budget

1. Column Entries.

a. For the initial Planning Budget, complete columns (4) and (5) and leave other columns blank.

b. For subsequent budgets, use column (3) to show the latest readily available figures from the books of accounts for Accounts 1410 through 1440, and Account 1495. In the heading of column (3), show the date as of which figures were taken. Use column (4) to show additional costs for completing the development work (Account 1410 through 1440 and 1495).

2. Site Improvements; Construction and Equipment. Enter, as applicable, in lines 2 through 5 and/or 41 through 45 the amounts stated for site improvements construction and equipment including related (MH) contributions from Subpart II and as further described below.

3. Turnkey and Conventional Projects.

a. Turnkey. The account classifications for Developer's Price, lines 1 through 8, are to be completed only for projects being developed under the Turnkey method. Where the developer is not providing the site, no entry will be made in line 1, Account 1440; instead, just as for conventional projects, lines 31 through 40 will be completed. For a developer-provided site, entries will be made for site acquisition costs to the IHA, e.g., appraisals (line 33) where required (see paragraph 9 below). The Total Developer's Price will be the price agreed upon at the Feasibility Conference by the developer, the IHA, and HUD. The amounts entered for site, architectural and engineering services should be the amounts to be included with the Preliminary Contract of Sale for the eventuality of separate purchase by the IHA. The amount entered for Other should be the sum of (1) the Developer's Fee and Overhead, (2) Interim Financing, and (3) Closing Costs. In the case of turnkey projects, planning costs approved by the HUD Field Office will allow for entries in lines 24 and 25 as well as in line 6 , in addition to the required services for which entry will be made in line 27.

b. Conventional. For conventional projects, lines 1 through 8 will remain blank and instead, those accounts will be completed utilizing lines 24 through 45. For lines 41 through 45, the Schematic Design Documents and Architect's Estimate of Project Construction Cost will provide a basis for reasonable estimates for costs of Site Improvements - Account 1450, Dwelling Structures -Account 1460, and Nondwelling Structures - Account 1470. Any comments from the HUD Field Office as a result of the prior submission of these documents shall be incorporated into the Budget. Close attention shall be given to the amounts for Dwelling Construction and Dwelling Equipment to be included in the Budget. The HUD Field Office may be requested to assist in preparing appropriate estimates for Dwelling and Nondwelling Equipment - Accounts 1465 and 1475. The estimate shall be accompanied by supporting data showing items and the cost of each.

4. 1410. Administration (lines 9 through 19). IHAs with experience in the development and management of low-income housing should estimate administration costs on the basis of such experience, as applicable, for the current development method. For turnkey projects, there will be less administration activity normally than for conventional projects. The amounts for the various subaccounts shall be the costs of the items of expense which are directly traceable to and essential in the planning, construction and completion of the project, and the prorata amounts of the IHA's total administration costs in respect to the items which are not wholly traceable to the project. Administration (1410) and Planning (1430) Costs ordinarily terminate with the End of the Initial Operating Period. After this date only costs of personnel employed in development work specifically applicable to the particular project (e.g., employee or architect engaged in warranty inspections) may be charged to these accounts.

a. 1410.3. Work - MH Contribution (line 11). This account shall be charged with that portion, if any, of the MH contribution attributed to work furnished to the IHA (for which the contractor is not responsible) for administrative purposes by or on behalf of the Homebuyer Families.

b. 1410.1 and 1410.2 (lines 9 and 10). The following supporting data shall accompany the estimates for Non-technical and Technical Salaries: List, by job title, each IHA employee whose salary, or portions thereof, will be chargeable to these accounts. For each, show

the annual rate of the gross salary, the estimated length of time the employee will spend in connection with the development of the project, and the total of the gross salary which is properly chargeable to either of these accounts. If only a portion of the employee's time will be chargeable to this project, show the percentage that will be so chargeable and show, in a footnote, the percentage distribution to other projects and the accounts to which distributed.

c. 1410.19 (line 18). The estimate for the Sundry Account shall include supporting data as follows: List and show the cost of each item of administrative and general expense for which a specific account is not provided in the 1410 group of accounts. If only a portion of the cost of any item will be chargeable to this project, show the percentage and amount that will be so chargeable and show, in a footnote, the percentage distribution to other projects.

5. 1418. Counseling Costs (line 21). This account shall be charged with the cost (not to exceed $500 multiplied by the number of homes in the project) of counseling to be provided to participating Families.

6. 1420.7 Interest - Income from Investments (line 22). The amount included for this account shall be computed as prescribed in HM 7510.1, Chapter 3, Section 15.

7. 1425. Initial Operating Deficit (line 23). In the absence of dependable previous experience data on which to base a preliminary estimate of the initial operating deficit, an allowance not to exceed $50 per dwelling unit may be used unless more is specifically authorized by HUD.

8. 1430. Planning (lines 24 through 30). For turnkey projects generally, architectural-engineering services will be included in the Developer's price except for periodic inspection of construction by an independent architect employed by the IHA (Account 1430.7).

a. 1430.1. Architectural and Engineering Fees (line 24). Architectural and engineering fees shall not exceed those set forth in the Schedule of Fees of the Architect's Contract.

b. 1430.2. Consultant Fees (line 25). The architect's contract provides that consultants retained by the architect must be paid under the terms of the architect's contract. Fees to be paid to other consultants should be included under this account and shall be accompanied by supporting data.

c. 1430.6. Permit Fees (line 26). If building or other similar fees have to be paid by the IHA, include the estimated amount under this account.

d. 1430.7. Inspection Costs (line 27). This estimate shall be accompanied by supporting data consisting of an itemized breakdown of the costs chargeable to this account. Include in the breakdown, by job title, a list of employees of the architect or (when use of IHA employees has been previously approved) of the IHA who will perform inspection work for the project, and show for each the same information as required by Paragraph 4b above.

e. 1430.9. Housing Surveys (line 28). The cost of all housing surveys and comprehensive planning shall be charged to this account. Include in this account the cost of housing surveys and the printing of reports in connection with them.

f. 1430.19. Sundry Planning Costs (line 29). In the absence of actual experience, the IHA should request the advice of HUD for this estimate.

9. 1440. Site Acquisition (lines 31 through 40). For provisions of cost accounts under this heading which are not explained below, see Accounting Handbook, HM7510.1, Chapter 3, Section 15.

a. 1440.1. Property Purchases (or Leases) (line 31). See Indian Housing Regulations and the Handbook as to limitations on size and cost of sites, terms of leases, requirements for appraisals and appraisal standards and special MH project requirements.

b. 1440.5. Appraisal Fees (line 33). This account shall be charged with (1) the costs incurred by the IHA, if any, for appraisals of land or improvements for sites to be provided by the IHA and (2) with costs incurred for obtaining appraisals of a developer-owned site for a turnkey project. No appraisal fee shall be included if the appraisals were conducted by the Bureau of Indian Affairs.

c. 1440.6. Title Information (line 34). No charge shall be made to this account where a BIA Title Status Report is utilized in accordance with the Interdepartmental Agreement.

10. 1470. Nondwelling Structures (line 44). Under 1470 establish a separate subaccount for any contributions for off-site improvements (i.e., water and sewer, solid waste).

11. 1495. Relocation (line 47). See the Indian Housing Handbook and HUD Relocation Handbook 1371.1, if applicable.

12. Donations. For donations, see account 2850 in HUD Handbook HM 7510.1, Chapter 3, Section 2. A donation represents a cash donation and the reasonable value of property donated to the project. An MH contribution is not a donation. Any cost met from cash donations and the value of any donations in kind will be included under the appropriate cost account and itemized in Subpart IV. Since donations cannot be included in the Total Development Cost, the total of donations will be subtracted from it and the result will be shown in line 50, "Total Before Contingency (Excluding Donations)."

13. Contingency. Enter not more than 5 percent for conventional projects, nor more than 1 percent for turnkey, of the Total Before Contingency, unless specifically approved by the Field Office based on adequate documented justification.

C. Subpart II. Detail of Construction and Equipment. Accounts 1450 through 1480.

1. General. The components of site improvement, construction and equipment costs will be identified in this Subpart. Each particular MH Contribution account (lines 52, 53, 57, 58, 63, 65, 66, and 76) shall be charged with that portion of the Total Development Cost attributed to it under the account classification in which it is listed. Donations will be included as described in paragraph B.12 above. Any off-site construction costs included in the proposed budget for which repayment will not be made by others will be described in an attachment and an explanation of why repayment will not be made by others will be included.

2. Column Entries. For the initial Planning Budget complete columns (4) and (5) and leave the other columns blank. For subsequent budgets:

(a) Enter in Columns (3), (4), and (5) required amounts for Accounts 1450 through 1480 as of the same date used for the entries in these columns in Subpart I.

(b) For a Contract Award Budget, list each proposed construction contract to be included under Account 1480 in Column (2) by name of contractor and type of work. Opposite each such listing, enter in Column (4) the appropriate amount from the corresponding Form HUD-52396, Analysis of Proposed Main Construction Contract.

(c) List all work and equipment not included under a formal construction contract (e.g. utilities extension/connection costs) by type under the applicable account. Identify by showing vendor name in column (2) and adding "NIC" after the item.

(d) Show approved force account work as separate labor and material cost items at each applicable construction or equipment account, and identify each by adding "(FA)" after the item.

(e) Distribution of Construction Contract Amount(s). Show on the Final Budget all construction contract amounts (including al approved changes)which were initially reflected at Account 1480 at contract award. Each final construciton contract amount should be distributed to the appropriate subsidiary account (Accounts 1450 through 1475) after the final billing under each contract has been paid. All such costs will therefore be entered in column (3) as an actual cost incurred. The Final Budget shall be accompanied by supporting data listing (a) the name of the contractor and type of work performed under each construction contract executed; (b) each original contract amount established and shown on form HUD 52396 at Contract Award stage; (c) a listing and identification of account classification for each change order approved for each construction contract; and (d) each final contract amount, including all change orders.

D. Subpart III. Cost of Relocation and Existing Improvements.

Enter information only with the Contract Award Budget. If the site was wholly vacant at the time it was acquired, enter "Site Wholly Vacant" on the total line and make no other entries. If the site included dwelling and/or nondwelling structures at acquisition, the amount entered on the first line shall be determined by prorating the total acquisition cost of the site in the ratio that the appraised value of the improvements bears to the total appraised value of the site. On the second line, show the total amount included under Subpart II for demolition work (line 51), if performed under separate contract or the estimated amount if performed under a single construction contract. On the third line, show the amount included in Subpart I, line 47, Column (5). Attach schedules detailing all costs comprising these amounts.

E. Subpart IV. Detail of Donations (Not MH Contributions).

For the detail of donations, enter an itemized description of donations identifying applicable account (paragraph C.1. above) and deduct the total donations from the Total Development Cost as described in paragraph B.12. above. MH Contributions are not donations.

F. Subpart V. Detail of MH Contributions.

Provide the detail of MH Contributions by showing for the various accounts, as applicable, the amounts comprising each form of MH Contribution.

[FR Doc. 95–15908 Filed 6–28–95; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–00–P]

Alaska; Notice for Publication F–14938–A2 and F–14938–B2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to St. Michael Native Corporation for approximately 9,835 acres. The lands involved are in the vicinity of St. Michael, Alaska, within Tps. 24 and 25 S., Rs. 18 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 31, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–15998 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[AK–964–1410–00–P]

Alaska; Notice for Publication F–14955–A2 and F–14955–B2; Alaska Native Claims Selections

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(b) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(b), will be issued to Wales Native Corporation for approximately 16,573.28 acres. The lands involved are in the vicinity of Wales, Alaska, within Tps. 2 and 3 N., Rs. 43 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in The Nome Nugget. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 [(907) 271–5960].

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until July 31, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Ana M. Stafford,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 95–15999 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[NM017–1430–01]

Emergency Closure Within the Ojito Special Management Area in Sandoval County, New Mexico

AGENCY: Bureau of Land Management, Albuquerque District.

ACTION: Notice of Emergency Closure.

SUMMARY: Notice is hereby given that effective June 29, 1995, mountain bikes (mechanical vehicles) are prohibited on approximately five (5) sections of public land southwest of San Ysidro, New Mexico.

This order is in addition to the 1987 motorized vehicles closure (52 FR 12471, April 16, 1987). The area is located in T. 15 N., R. 1 E., secs. 17, 20, 21, 28, and 29, New Mexico Principal Meridian.

The purpose of this area closure is to prevent unnecessary degradation of resources and undue environmental damage. The emergency area closure is in accordance with the provisions of 43 CFR 8364.1, and applies to all persons. This designation remains in effect until further notice. Bicycle use on the following previously designated open routes is not affected by this order, 15–1–28.1 and 15–1–12.

FOR FURTHER INFORMATION CONTACT: Donna Dudley, Outdoor Recreation Planner at the Bureau of Land Management, Rio Puerco Resource Area, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8913.

Dated: June 23, 1995.

Sue E. Richardson,

Acting District Manager.

[FR Doc. 95–16011 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–FB–M

[OR110–G5–151]

Temporary Vehicle Use Restriction Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of temporary vehicle use restriction on the recently acquired Box O Ranch within Jackson County in the Ashland Resource Area, Medford, Oregon.

SUMMARY: This notice informs the public of the establishment of temporary vehicle use restrictions on recently acquired public lands for the protection of resources and to prevent sedimentation. The lands fall within the Ashland Resource Ara, Medford, Oregon.

FOR FURTHER INFORMATION CONTACT: Bill Haight, Wildlife Biologist, Ashland Resource Area, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, (503) 770–2431.

EFFECTIVE DATE: June 29, 1995.

SUPPLEMENTARY INFORMATION: Under the authority contained in 43 CFR 8364, this emergency action restricts vehicle use on BLM-administered public land, formerly the Box O Ranch, to prevent sedimentation and to protect fragile upland meadows and riparian systems. Vehicle use on roadways is restricted to ''administrative access only'' and shall be limited to persons specifically designated by the area manager to drive on said roadways. This action will remain in effect until completion of a management plan that adequately addresses public access on these lands. The public land on which these roads are located are described as follows:

T. 40 S., R. 4 E., Willamette Meridian,
Sec. 21, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 22, W½W½;
Sec. 27, W½W½;
Sec. 28, ALL;
Sec. 33, NE¼NW¼.

The area described contains approximately 1,200 acres in Jackson County.

Richard J. Drehobl,

Ashland Area Manager.

[FR Doc. 95–15917 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–P

[NM–930–1310–01; NMNM 90814]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease NMNM 90814, Rio Arriba County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from September 1, 1994, the date of termination. No valid lease has been issued affecting the land. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective September 1, 1994, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

Dated: June 20, 1995.

Gloria S. Baca,

Land Law Examiner.

[FR Doc. 95–16017 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–FB–M

[CO–070–1430–01; COC 57652]

Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Eagle County, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In response to an application from Eagle County, Colorado, the following public lands have been examined and found suitable for classification for conveyance to Eagle County, Colorado, under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands would be used for a highway maintenance facility.

Sixth Principal Meridian

T. 2S., R. 84W.,
Sec. 9: lot 2.

Containing 2.28 acres, more or less.

The lands are not needed for Federal purposes. Conveyance of the lands is consistent with current BLM land use planning and would be in the public interest.

A patent, if issued, will be subject to the following reservations, terms, and conditions:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. All the mineral deposits in the lands so patented, and the right of the United States, or persons authorized by the United States, to prospect for, mine, and remove such deposits from the same under applicable laws and regulations as the Secretary of the Interior may prescribe.

4. The subject lands are withdrawn for power purposes by Power Site Classification No. 244, approved August 29, 1919. The United States reserves the right to itself, its permittees or licensees to enter upon, occupy and use any part or all of the lands necessary for power purposes under Part 1 of the Federal Power Act of August 26, 1935, as amended (16 U.S.C. 818) upon payment of damages to buildings or other improvements caused by such entry. Any improvements or structures placed upon the land which shall be found to interfere with such power development shall be removed or relocated as may be necessary to eliminate interference with power development at no cost to the United States, its permittees or licensees.

5. A reservation for those rights for buried telephone line purposes as have been granted to Eagle Telecommunications, Inc., its successors and assigns, by right-of-way Colorado 27649 under the Act of February 15, 1901, as amended (43 U.S.C. 959).

6. A reservation for those rights for road purposes as have been granted to Eagle County, its successors and assigns, by right-of-way Colorado 43109 under the Act of October 21, 1976 (43 U.S.C. 1761).

7. Title shall revert to the United States upon a finding, after notice and opportunity for a hearing, that, without the approval of the Secretary of the Interior or his delegate, the patentee or its approved successor attempts to transfer title to or control over the lands to another, the lands have been devoted to a use other than that for which the lands were conveyed, or the lands have not been used for the purpose for which the lands were conveyed for a 5-year period. Provided further that the Secretary of the Interior may take action to revest title in the United States if the patentee directly or indirectly permits its agents, employees, contractors, or subcontractors (including without limitation lessees, sublessees, and permittees) to prohibit or restrict the use of any part of the patented lands or any of the facilities thereon by any person because of such person's race, creed, color, sex, or national origin.

R&PP CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a highway maintenance facility.

Comments on the classification are restricted to whether the land is physically suited for a highway maintenance facility, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

R&PP APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a highway maintenance facility.

Comments received on the classification will be answered by the State Director with the right to further comment to the Secretary. Comments on the application will be answered by the State Director with the right of appeal to the Interior Board of Land Appeals. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Grand Junction District, 2815 H Road, Grand Junction, Colorado.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act. The segregative effect shall terminate upon issuance of a patent, upon final rejection of the application, or two years from the date of filling of the applications, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed classification or conveyance of the lands to the District Manager, Grand Junction District Office, 2815 H Road, Grand Junction, Colorado, 81506. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Mark T. Morse,

District Manager.

[FR Doc. 95–16012 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JB–P

[NV–930–05–1430–01; N–51468]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, Nevada

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 8: SW¼SW¼SW¼,
W½SE¼SW¼SW¼.

Containing approximately 15 acres.

The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Marian McClellan. It has been determined that the subject parcel contains no known mineral values, except oil and gas and geothermal steam and related geothermal resources. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Marian McClellan since she has developed the property which includes a residence. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservations to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. The oil, gas, and geothermal steam in the land so patented.

And Will Be Subject To

1. Those rights granted to the Lovelock Meadows Water District for a water pipeline under Right-of-way NEV–066294.

3. An easement 30 feet in width along the west and south boundary of the SW¼SW¼SW¼, and along the south boundary of the W½SE¼SW¼SW¼, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

Since the property has been developed, the patent will contain a solid waste/hazardous substance(s) statement indemnifying the United States. Also, since hazardous substances were inventoried on the parcel, the patent will contain a notice describing the hazardous substances inventoried.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 E. 4th St., Winnemucca NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 21, 1995.

Ron Wenker,

District Manager.

[FR Doc. 95–16009 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–05–1430–01; N–49636]

Notice of Realty Action, Direct Sale of Public Land, Pershing County, Nevada

SUMMARY: The following described land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713 and 1719), at not less than fair market value:

Mount Diablo Meridian, Nevada

T. 27 N., R. 32 E.,
Sec. 8: SE¼NE¼SW¼SW¼,
E½SE¼SW¼SW¼,
SW¼NW¼SE¼SW¼,
NW¼SW¼SE¼SW¼.

Containing approximately 12.5 acres.

The lands are not required for federal purposes. Disposal is consistent with the Bureau's planning for this area and would be in the public's interest. This land is being offered by direct sale to Hallie Pfeifer. It has been determined that the subject parcel contains no known mineral values, except oil and gas and geothermal steam and related geothermal resources. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests having no known value. The applicant will be required to pay a $50.00 non-refundable filing fee for conveyance of the said mineral interests.

The land will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, Bureau of Land Management, 705 E. 4th St., Winnemucca, NV 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to Hallie Pfeifer since he has developed the property which includes a residence. The above described land is hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statutes, for 270 days from the date of publication of this notice, or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

A Patent, When Issued, Will Contain the Following Reservatiosn to the United States

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. The oil, gas, and geothermal steam in the land so patented.

And Will Be Subject To

1. Those rights granted to the Lovelock Meadows Water District for a water pipeline under Right-of-way NEV–066294.

2. Those rights granted to the Nevada Department of Transportation for highway purposes under Right-of-way N–6984.

3. An easement 30 feet in width along the south boundary of the

E½SE¼SW¼SW¼, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

Since the property has been developed, the patent will contain a solid waste/hazardous substance(s) statement indemnifying the United States.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Winnemucca District Office, Bureau of Land Management, 705 E. 4th St., Winnemucca NV 89445. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 21, 1995.

Ron Wenker,

District Manager,

[FR Doc. 95–16008 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; N–59496]

Notice of Realty Action; Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public purpose lease/conveyance.

SUMMARY: The following described land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Victory Christian Center proposes to use the land for an activity center, church office, sanctuary with support facilities, a K4 through 12 school, outdoor playground and sports activity areas.

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,
Sec. 20: SW¼SW¼.
Containing 40.00 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. An easement 30.00 feet in width along the north and east boundaries, 50.00 feet in width along the west and south boundaries, together with a 25 foot spandrel area in the northwest corner, also a 54 foot spandrel area in the southwest corner, a 25 foot spandrel area in the southeast corner, a 15 foot spandrel area in the northeast corner, in favor of Clark County for roads, public utilities and flood control purposes.

2. Those rights for natural gas pipeline purposes which have been granted to CalNev Pipeline Company by Permit No. NEV–056213 under the Act of February 25, 1920 (3O U.S.C. 185 sec. 28). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the district Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a church facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a church facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register.** The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: June 13, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–15918 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–M

[OR 51890; OR–080–05–1430–01: G5–159]

Realty Action; Proposed Modified Competitive Sale

June 22, 1995.

The Notice of Realty Action published in the May 12, 1995, edition of the **Federal Register** (60 FR 25730) is hereby amended as follows:

The appraised fair market value has been determined to be $72,000.00.

Sealed written bids, delivered or mailed, must be received by the Bureau of Land Management, Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306, prior to 11:00 a.m. on Wednesday, July 11, 1995.

All other conditions of the notice remain in effect.

Robert B. Hershey,

Acting Cascades Area Manager.

[FR Doc. 95–16016 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–M

[CO–034–95–1220–00]

Designation Order; Moratorium on Commercial Outfitting Permits for the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Basin Resource Area, Montrose Colorado.

ACTION: Establishment of a moratorium on the number of commercial outfitting permits for the San Miguel River Special Recreation Management Area (SRMA) and Area of Critical Environmental Concern (ACEC) administered by the Bureau of Land Management Montrose District.

SUMMARY: The BLM Montrose District, the Telluride Institute, San Miguel County, and the Town of Telluride are jointly sponsoring the writing of a Multi-Objective Plan for the San Miguel River Basin. Partners in the planning effort include over 50 representatives of local, state, and federal agencies, interest groups, and interested individuals. The plan will address

numerous issues concerning the protection of the San Miguel River's natural resources and the management of users, including commercial recreation users that operate under Special Recreation Permits issued by the BLM. The final plan will provide strategies for determining thresholds for commercial use and the means for rationing use should those thresholds be exceeded.

The BLM has determined that a moratorium on the number of commercial outfitting permits is needed to hold the commercial use at 1994 levels while the multi-objective plan is being prepared. The moratorium will allow BLM to direct full management attention to the planning process instead of spending significant amounts of time, personnel, and budget reacting to higher and higher levels of uncontrolled use and resources damage.

The moratorium will go into effect immediately and remain in effect until the final plan is approved. Only those commercial outfitters that had a valid permit in 1994, and properly met the requirements of that permit, will be eligible to obtain permits in 1995 and any future year until the plan is approved.

When the plan is approved, the moratorium will be lifted and constraints on the number of outfitting permits and/or the total number of user days associated with those permit, if any, will be implemented.

Sales of outfitting businesses and any transfer of permits that may apply during the period of the moratorium will be dealt with through BLM Manual H8372–1.

EFFECTIVE DATE: June 15, 1995.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this moratorium on commercial outfitting permits in the San Miguel River Special Recreation Management Area and Area of Critical Environmental Concern may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Basin Resource Area, Montrose District, 2505 South Townsend Ave., Montrose, Colorado 80401, (970) 249–6047.

Authority for implementing this action is contained in 43 CFR 8372.3.

Dated: June 20, 1995.

Jamie Connell,

Associate District Manager.

[FR Doc. 95–16018 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JB–M

[OR–942–00–1420–00: G5–152]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Williamette Merdian

Oregon

T. 9 S., R. 23 E., accepted April 28, 1995
T. 18 S., R. 27 E., accepted June 1, 1995
T. 26 S., R. 3 W., accepted June 1, 1995
T. 18 S., R. 8 W., accepted May 10, 1995
T. 22 S., R. 11 W., accepted May 12, 1995

Washington

T. 7 N., R. 46 E., accepted June 1, 1995
T. 7 N., R. 47 E., accepted June 1, 1995
T. 23 N., R. 10 W., accepted May 30, 1995

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: June 16, 1995.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Realty and Records Services.

[FR Doc. 95–16015 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–33–M

[AK–932–1430–01; AA–8964, AA–11330]

Proposed Withdrawal and Opportunity for Public Meeting; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed two applications to withdraw approximately 8.94 acres of public lands, in order to return the lands to national forest status. The lands had been occupied for homesite purposes and were excluded from the Tongass National Forest and restored to entry under the public land laws by Executive Order No. 5449, dated September 25, 1930, and Executive Order No. 5947, dated November 16, 1932, respectively. This notice closes the lands for up to 2 years to those segregations applicable to National Forest System lands; however, the lands are also affected by overlapping Public Land Order No. 5180, as amended, and will remain subject to the segregations established by that order until a further opening order is issued.

DATES: Comments and requests for a public meeting must be received by September 27, 1995.

ADDRESSES: Comments and meeting requests should be sent to the Alaska State Director, BLM Alaska State Office, 222 West 7th Avenue, No. 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 907–271–5477.

SUPPLEMENTARY INFORMATION: On June 7, 1995, the U.S. Department of Agriculture, Forest Service, filed applications to withdraw the following described public lands, to be managed and subject to the segregations established for National Forest System lands:

Copper River Meridian

(1) Fish Creek Parcel (AA–8964), located within the E½NW¼ of Sec. 23, T. 68 S., R. 99 E., as described in Executive Order No. 5947, this parcel contains approximately 5.00 acres.

(2) Farragut Bay Parcel (AA–11330), located within the NE¼NW¼ of Sec. 21, T. 55 S., R. 77 E., as described in Executive Order No. 5449, this parcel contains approximately 3.94 acres.

The areas affected by this order aggregate approximately 8.94 acres.

The homesite entries were never patented, therefore the exclusions are no longer appropriate. The purpose of the proposed withdrawal is to restore the lands to the Tongass National Forest,

and to be managed as National Forest System lands.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Alaska State Director of the Bureau of Land Management at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Alaska State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The applications will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the applications are denied or canceled or the withdrawal is approved prior to that date. The segregation made by this order shall overlap but not otherwise affect the segregation established by Public Land Order No. 5180, as amended.

The lands will be managed in accordance with the various acts that govern occupancy and use of National Forest System lands. Temporary uses which may be permitted during this segregative period would be for land use authorizations that are compatible with intended uses allowed under the discretion of the authorized officer.

Dated: June 20, 1995.

Sue A. Wolf,

Chief, Branch of Land Resources

[FR Doc. 95–16014 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–JA–P

[MT–930–1430–01; MTM 82330]

Opening of Land in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 19,684.74 acres of public mineral estate for protection of the unique resources within the Sweet Grass Hills expires on August 2, 1995, and the land will be opened to mining. The lands have been and will remain open to surface entry and mineral leasing.

EFFECTIVE DATE: August 2, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949, or Jerry Majerus, Lewistown District Office, Lewistown, Montana 59457, 406–538–7461.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register** (58FR41289–91) August 3, 1993, which segregated the lands described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from the general land laws or the mineral leasing laws. The 2-year segregation expires August 2, 1995. The withdrawal application will continue to be processed unless it is canceled or denied.

At 9 a.m. on August 2, 1995, the lands will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of these lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempting adverse possession under 30 U.S.C. 38 (1988) shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by state law where not in conflict with federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts.

Dated: June 20, 1995.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 95–16019 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–DN–P

[NV–943–1430–01; N–59082]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects an error in the legal description for the proposed withdrawal of public land for use by the Department of Commerce, National Oceanic and Atmospheric Administration.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6507.

SUPPLEMENTARY INFORMATION: In the notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada, 59 FR 65540, December 20, 1994, make the following correction:

1. On page 65540, column 2, under the heading **SUPPLEMENTARY INFORMATION**, the line which reads ''T. 34 N., R. 54 E.,'' is corrected to read ''T. 34 N., R. 55 E.,''.

Dated: June 19, 1995.

Lee F. Englesby,

Acting Deputy State Director, Operations.

[FR Doc. 95–16010 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–HC–P

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–803881

Applicant: The North Carolina Arboretum, Asheville, NC

Collection and propagation of seeds or cuttings of Cumberland rosemary, *Conradina verticillata*, and Large-flowered skullcap, *Scutellaria montana*, from populations in Obed Wild and Scenic River and Big South Fork National River and Recreation Area, Morgan and Scott Counties, Tennessee and McCreary County Kentucky; Chickamauga Reservoir and Lookout Mountain, Hamilton County, Tennessee and Dade County, Georgia. Plants would be propagated for inclusion in the National Collection of Endangered Plants.

PRT–803883

Applicant: Pierson Environmental Consultation, Calera, Alabama

The applicant requests a permit to take (collect dead shells of each species) 42 species of endangered mussels and snails throughout the southeastern United States for the purpose of enhancement of survival of the species.

Written data or comments on any of these applications should be submitted to: Regional Permit Coordinator, U.S.

Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345. All data and comments must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 210, Atlanta, Georgia 30345 (Attn: David Dell, Permit Analyst). Telephone: 404/679–7313; Fax: 404/679–7280.

Dated: June 22, 1995.

Jerome M. Butler,

Acting Regional Director.

[FR Doc. 95–15974 Filed 6–28–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Notice of Inventory Completion of Native American Human Remains from the Island of Lanai in the Collections of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with the provisions of the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003(d), of the completion of an inventory of human remains from the Island of Lanai by the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed inventory and assessment of these human remains and associated funerary objects has been made by the Bishop Museum's professional staff and representatives of the following Native Hawaiian organizations: *Hui Mālama Pono 'O Lāna'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei,* the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, Native Hawaiian organizations under 25 U.S.C. 3001(11).

The human remains represent at least 212 individuals and six associated funerary objects. These remains came to Bishop Museum from the following sources:

In 1914, Felix von Luschan, a Professor of Anthropology at the Berlin Museum, was assisted in his excavations at Awalua, Lanai, by Museum staff John Penchula, August Perry, John F. G. Stokes, and by William Wagner; 83 remains and 4 associated funerary objects (2 small items of personal adornment, one item fishing equipment, and one animal tooth) were donated.

In 1920, Louis R. Sullivan, an employee of the American Museum of Natural History in New York, was assisted by George C. Munro in excavations on the North Coast of Lanai; 1 animal bone and 100 human remains were donated to Bishop Museum.

In 1921, Kenneth Emory, an anthropologist at Bishop Museum, conducted excavations on Lanai that resulted in 1 animal bone and 26 remains.

In 1922, Hector G. Munro donated one skull from Keoneheehee, Lanai.

In 1926, the Museum purchased one skull from Lanai from George C. Munro.

In 1927, George C. Munro donated one skull from Lanai.

No known individuals were identified. In consultation with *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei,* the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, the Bishop Museum decided that no attempt would be made to determine age of human remains from Lanai. Geographic location of the remains, types of associated funerary objects, and method of burial preparation are those of Native Hawaiians ancestral to contemporary Native Hawaiians.

Based on the above information, officials of the Bishop Museum, in consultation with representatives of *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei,* the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council, determined pursuant to 25 U.S.C. 3001(2) that there is a relationship of shared group identity which can be reasonably traced between these remains and *Hui Mālama Pono 'O Lāna'i.*

This notice has been sent to *Hui Mālama Pono 'O Lana'i, Hui Mālama I Nā Kupuna 'O Hawai'i Nei,* the Office of Hawaiian Affairs, and the Maui/Lāna'i Island Burial Council. Representatives of any Native Hawaiian organizations which believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Anita Manning, Assistant Director, Collections Management, Bernice Pauahi Bishop Museum, P. O. Box 19000, Honolulu, Hawai'i, 96817-0916, <manning@bishop.bishop.hawaii.org>, 808-848-4117, before July 31, 1995.

Dated: June 23, 1995.

Veletta Canouts,

Acting, Departmental Consulting Archeologist and

Acting Chief, Archeological Assistance Division

[FR Doc. 95-15963 Filed 6-28-95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32710]

Chicago and North Western Railway Company—Trackage Rights Exemption—Iowa Interstate Railroad Limited

Iowa Interstate Railroad Limited (IAIS) has agreed to grant overhead trackage rights to Chicago and North Western Railway Company (C&NW) [1] over 132 miles of its rail line between milepost 358 at Des Moines, IA, and milepost 490.0 at Council Bluffs, IA.

The purpose of this transaction is to facilitate the maintenance and reconstruction of the existing C&NW track extending east from Council Bluffs to Nevada, IA, then south to Des Moines. The trackage rights will provide an alternate route to permit the efficient and expeditious movement of C&NW's traffic between Council Bluffs and Des Moines. The trackage rights are scheduled to become effective on June 30, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Stuart F. Gassner, 165 North Canal Street, Chicago, IL 60606–1551.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: June 23, 1995.

[1] Union Pacific Corporation acquired control of Chicago and North Western Railway Company in *Union Pacific Corporation, Union Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company,* Finance Docket No. 32133 (ICC served Mar. 7, 1995).

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16025 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32716]

Hampton Railway, Inc.—Acquisition and Operation Exemption—Willamina & Grand Ronde Railway Company

Hampton Railway, Inc. (Hampton), has filed a notice of exemption to acquire and operate 5.2 miles of rail line from Willamina & Grand Ronde Railway Company (WGR).[1] The trackage extends from milepost 0.0 at Willamina to milepost 5.2 at Fort Hill, in Polk and Yamhill Counties, OR. Consummation of the transaction was scheduled to take place on or after June 7, 1995.

Any comments must be filed with the Commission and served on: Fritz R. Kahn, Suite 750 West, 1100 New York Avenue NW., Washington, DC 20005.

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: June 21, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16024 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32730]

Iowa Interstate Railroad, Ltd.—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant local trackage rights to Iowa Interstate Railroad, Ltd. (IAIS), over 13.9 miles of its line of railroad between milepost DU–340.8, in Des Moines, IA, to the end of the line at milepost DU–354.7, in Grimes, IA, including the Clive Spur, in Polk County, IA.[1] The trackage rights include all appurtenances, connecting and industrial tracks, and fixed improvements thereon, identified and described in the trackage rights agreement dated June 7, 1995. The trackage rights were scheduled to become effective on June 27, 1995.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: T. Scott Bannister, 405 6th Avenue, 1300 Des Moines Building, Des Moines, IA 50309.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Decided: June 22, 1995.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 95–16026 Filed 6–28–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Correction to Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

In the notice of a proposed Amendment to the Consent Decree in *United States* v. *Agrico Chemical Company, et al.,* (N.D. FL.) published in 60 FR 32167, dated June 20, 1995, the civil action number should read Civil Action No. 94–30057, instead of Civil Action No. 93–23–C.

Bruce S. Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 95–16038 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Advanced Lead-Acid Battery Consortium

Notice is hereby given that, on May 17, 1995, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Advanced Lead-Acid Battery Consortium (''ALABC''), a discrete program of the International Lead Zinc Research Organization, Inc. (''ILZRO''), has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing the withdrawal of three members to the ALABC. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the ALABC advised that Honda R&D; Wako R&D Center; and Electrotek Concepts, Inc. have withdrawn from the ALABC.

No other changes have been made in either the membership or planned activity of the ALABC. Membership in the ALABC remains open and the ALABC intends to file additional written notification disclosing any future changes in membership.

On June 15, 1992, the ALABC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1992 (57 FR 33522).

The last notification was filed with the Department on February 17, 1995. A notice was published in the **Federal Register** pursuant to section 6(b) on March 30, 1995 (60 FR 16504).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16040 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Cullen Engineering Research Foundation

Notice is hereby given that on March 20, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the participants in the Cullen Engineering Research Foundation (the ''Foundation'') filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing (1) the identities of the parties to the

[1] Hampton, an affiliate of Hampton Lumber Sales Co., will be the owner and operator of the line. However, Hampton will hire a contract operator, Willamette & Pacific Railroad Company, to perform the service in the name of Hampton and for its account.

[1] IAIS concurrently filed a petition for exemption under 49 U.S.C. 10505 from the prior approval requirements of 49 U.S.C. 11343–45, to permit IAIS to lease and operate the 13.9-mile line. The petition has been docketed as *Iowa Interstate Railroad, Ltd.—Lease and Operation Exemption—Norfolk and Western Railway Company,* Finance Docket No. 32731.

Foundation and (2) the nature and objectives of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties and the general area of planned activity are: Amoco Production Company, Houston, TX; Conoco, Inc., Ponca City, OK; Shell Development Co., Bellaire, TX; Brunswick Composites, Lincoln, NE; Hydril Co., Houston, TX; Amoco Performance Products, Inc., Alpharetta, GA; Hercules, Inc., Wilmington, DE; Brown and Root U.S.A., Inc., Houston, TX; Stress Engineering Services, Inc., Houston, TX; The Composites Engineering and Applications Center for Petroleum Exploration and Production of the University of Houston, Houston, TX; and the Cullen Engineering Research Foundation, Houston, TX.

The purpose of this collaboration is to develop technologies and to qualify the use of composite materials for high-performance Tension Leg Platform (''TLP'') production risers.

Information about participating in this Foundation may be obtained by contacting Vita P. Como, Cullen Engineering Research Foundation, Houston, Texas.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16043 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993 Global Silicones Council

Notice is hereby given that, on May 5, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Global Silicones Council (''GSC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the parties to the venture and (2) the nature and objective of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the members in GSC are Bayer AG, Leverkusen, Germany; Dow Corning Corporation, Midland, MI; GE Silicones, Waterford, NY; Th. Goldschmidt AG, Essen, Germany; Huls AG, Marl, Germany; OSi Specialities, Inc., Danbury, CT; Rhone-Poulenc Chimie, Courbevoie, France; Shin-Estu Chemical Co. Ltd., Tokyo, Japan; and Wacker-Chemie GmbH, Munich, Germany. Non-voting participants to the venture are Silicones Environmental, Health and Safety Council; Centre Europeen des Silicones; and Silicone Industry Association of Japan.

GSC's objective is to promote the safe use, stewardship, effectiveness and regulatory approval of organosilicon compounds. In pursuit of this objective, GSC plans to undertake a variety of activities, including research, testing and the collection, analysis and dissemination of information on environmental health and safety issues relating to organosilicon compounds.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16039 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Petroleum Environmental Research Forum Project No. 94–13

Notice is hereby given that, on May 26, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') Project No. 94–13, titled ''Participation Agreement'' has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identifies of the parties are Exxon Research and Engineering Company, Florham Park, NJ; British Petroleum Oil Company, Cleveland, OH; Conoco Inc., Houston, TX; Texaco Research and Development, Port Arthur, TX; Chevron Research and Technology Company, Richmond, CA; Amoco Corporation, Naperville, IL; Arco Exploration, Plano, TX; Elf Aquitaine, Washington, D.C.; Mobil Exploration and Production Technology, Dallas, TX; and Phillips Petroleum, Bartlesville, OK. The general area of planned activity is the initial evaluation of phytoremediation as a site remediation technology as applied to soils of petroleum, petrochemical and chemical industry facilities containing residual hydrocarbons.

Participation in this venture will remain open to all interested persons and organizations until the issuance of the final Project Completion Date which is presently anticipated to occur approximately thirty-six (36) months after the Project commences. The participants intend to file additional written notifications disclosing all changes in its membership.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16042 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Association

Notice is hereby given that, on June 12, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Portland Cement Association (''PCA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the EPRI Center for Materials Production has become an Associate Member; Claudius Peters, Inc. has changed its name to BMH Americans Inc., and the Northwest Concrete Promotion Group has changed its name to the Northwest Cement Producers Group. In addition, effective June 30, 1995 the Rinker Materials Corporation will resign its membership, and effective July 1, 1995 the North Texas Cement Company, L.P., will become a member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PCA intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on November 22, 1994. A notice was published in the **Federal Register** pursuant to section (6(b) of the Act on March 15, 1995, 60 FR 14003.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16045 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Norton Diamond Film/ Kennametal Research and Production Venture

Notice is hereby given that, on February 27, 1995, pursuant to Section 6(a) of the National Cooperative Research and Product Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Norton Diamond Film Division (''Norton Diamond Film'') of Saint-Gobain/Norton Industrial Ceramics Corporation, and Kennametal Inc. (''Kennametal''), have filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a research and production venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Norton Diamond Film, Northbor, MA and Kennametal Inc., Latrobe PA. Norton Diamond Film is indirectly controlled by Compagnie de Saint-Gobain S.A., Paris, France; Kennamental is not controlled by any other person. The purpose of this joint venture is to combine Kennametal's special carbide formation and Norton Diamond Film's diamond deposition technology in the development and demonstration of the next generation of carbide round tools and wear parts. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16041 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; X Consortium, Inc.

Notice is hereby given that, on June 6, 1995, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), X Consortium, Inc. (the ''Corporation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following are no longer members of the Corporation: Apple Computer, Inc.; ATR Institute International; Georgia Institute of Technology; Japan Computer Corp.; Locus Computing Corporation; M3I Systems, Inc.; Openware Technologies; and Phase X Systems.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Corporation intends to file additional written notifications disclosing all changes in membership.

On September 15, 1993, the Corporation field its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 10, 1993 (58 Fed. Reg. 59737).

The last notification was filed with the Department on March 7, 1995. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 27, 1995 (60 FR 20750).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 95–16044 Filed 6–28–95; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–00392]

General Mills Incorporated, CFTO-South Chicago Plant, Chicago, IL; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 19, 1995, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for NAFTA-Transitional Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on April 26, 1995 and was published in the **Federal Register** on May 9, 1995 (60 FR 24653).

The petitioner claims that import data provided by the company were not accurate, and present evidence that imports of cereal from Mexico did impact General Mill's market share.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16060 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[NAFTA–00444]

Haggar Clothing Company, Robstown Manufacturing Company, A/K/A Greenville Pant Manufacturing Company, Robstown, Texas; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on June 7, 1995, applicable to all workers at the subject firm. The amended notice will soon be published in the **Federal Register**.

New information received from the State Agency show that some of the workers at Haggar Clothing Company had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–00444 is hereby issued as follows:

''All workers of workers of Haggar Clothing Company, Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, located in Robstown, Texas who became totally or partially separated from employment on or after April 27, 1994 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, DC, this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16061 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–30,850]

Haggar Clothing Co., Robstown Manufacturing Co., a/k/a Greenville Pant Manufacturing Co., Robstown, TX; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on May 11, 1995, applicable to all workers of the subject firm. The notice was published in the **Federal Register** on May 25, 1995 (60 FR 27793).

New information received from the company show that some of the workers at Haggar Clothing Company had their unemployment insurance (UI) taxes paid to Greenville Pant Manufacturing Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–30,850 is hereby issued as follows:

''All workers of Haggar Clothing Company/Robstown Manufacturing Company, a/k/a Greenville Pant Manufacturing Company, Robstown, Texas who became totally or partially separated from employment on or after March 16, 1994 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16059 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[Poughkeepsie, New York, TA–W–29,743 Wappingers Falls, New York, TA–W–29,743A Kingston, New York, TA–W–29,743B Somers, New York, TA–W–29,743C Hopewell Junction, New York, TA–W–29,743D White Plains, New York, TA–W–29,743E]

IBM Corporation; Enterprise Systems Large-Scale Computing Systems; Division and Its Successors; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

On March 23, 1995, the Department of Labor issued a Notice of Revised Determination on Reconsideration, applicable to all workers at IBM Corporation, Poughkeepsie, New York. The notice was published in the **Federal Register** on April 5, 1995 (60 FR 17371).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. New information received from the State shows that in addition to the Poughkeepsie location, the IBM Large-Scale Computing Division (LSCD) has workers located in Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York. New information shows that originally known as Enterprise Systems, since September 16, 1993, the Mainframe Division has been known as the LSCD. On January 9, 1995, the LSCD was split into two units, the System 390 and the Power Parallel Division.

Further information shows that the workers at these IBM facilities are providing administrative and support services, including systems programming, to IBM's Enterprise Systems and its successors located in various cities within Dutchess, Westchester, and Ulster Counties of New York.

Other findings show that there are other IBM facilities in Poughkeepsie, New York whose employees would not be covered under TA–W–29,743.

The intent of the Department's certification is to include all workers of IBM Corporation, the Enterprise Systems, Large-Scale Computing Systems Division, and its successors who are adversely affected by imports.

The amended notice applicable to TA–W–29,743 is hereby issued as follows:

''All workers of IBM Corporation, Enterprise Systems, Large-Scale Computing Systems Division, and its successors, located in Poughkeepsie, Wappingers Falls, Kingston, Somers, Hopewell Junction, and White Plains, New York who became totally or partially separated from employment on or after March 23, 1993, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 16th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16058 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,752]

IBM Corporation, East Fishkill Facility, Hopewell, New York; Notice of Revised Determination on Reopening

On June 15, 1995, the Department, on its own motion, reopened its investigation for the former workers of the subject firm engaged in the production of thermal conduction modules and component parts, other than chips.

On August 10, 1994, the Department of Labor issued a Notice of Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to all workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York. The workers of the subject firm engaged in the production of chips were certified eligible to apply for adjustment assistance under the Trade Act. The workers of the subject firm engaged in the production of thermal conduction modules were denied because the criterion (3) of the Trade Act Requirements had not been met. The notice was published in the **Federal Register** on August 25, 1994 (59 FR 43867).

On March 23, 1995, the Department issued a revised determination for workers of IBM's Large Scale Computing Division (LSCD) in Poughkeepsie, New York, finding workers eligible to apply for worker adjustment assistance under petition TA–W–29,743. The notice was published in the **Federal Register** on April 5, 1995 (60 FR 17371).

New findings show that the thermal conduction modules and component parts, other than chips, produced by the workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York supported the production at IBM's LSCD operations.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with thermal conduction modules and component parts produced at IBM Corporation, East Fishkill Facility, Hopewell Junction, New York contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

''All workers of IBM Corporation, East Fishkill Facility, Hopewell Junction, New York, engaged in employment related to the production of chips, thermal conduction modules and component parts produced at IBM Corporation, East Fishkill Facility, Hopewell Junction, New York who became totally or partially separated from employment on or after April 8, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 16th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16055 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–29,762]

Kirschner Medical Corporation a/k/a Biomet, Marlow, Oklahoma; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on June 28, 1994, applicable to all workers of Kirschner Medical Corporation, located in Marlow, Oklahoma, Texas. The notice was published in the **Federal Register** on July 19, 1994 (59 FR 36793).

New information received from the company show that some of the workers at Kirschner Medical Corporation had their unemployment insurance (UI) taxes paid to Biomet, the parent company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–29,762 is hereby issued as follows:

''All workers of Kirschner Medical Corporation, a/k/a Biomet, Marlow, Oklahoma engaged in cutting and sewing related to the production of orthopedic support products who became totally or partially separated from employment on or after April 4, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, DC this 20th day of June 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–16056 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than July 10, 1995.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 19th day of June, 1995.

Victor J. Trunzo,

Program Manager, Policy and Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
NETP Inc. (Wkrs)	Niagara Falls, NY	06/19/95	05/30/95	31,128	Wire Harnesses.
Library Bureau, Inc. (IUE)	Herkimer, NY	06/19/95	06/01/95	31,129	Library Shelves & Office Furniture.
Peerless, Co. (IAM)	Tualatin, OR	06/19/95	05/17/95	31,130	Logging Equipment.
Karen Fashions, Inc. (ILGWU)	Secaucus, NJ	06/19/95	05/31/95	31,131	Women's Wool Coats.
Chicago Laser Systems (Wkrs)	Des Plaines, IL	06/19/95	05/30/95	31,132	Lasers.
Sarne Corp. (LGPN)	Edison, NJ	06/19/95	06/01/95	31,133	Handbag & Accessories.
Farah Manufacturing Co. (Wkrs)	El Paso, TX	06/19/95	06/05/95	31,134	Men's & Boys' Pants, Shorts, Jackets.
Greif Bros. Corporation (Wkrs)	Amhurst, NY	06/19/95	05/08/95	31,135	Steel & Fibre Drums, Cartons.
DTH Enterprise, Inc. (Wkrs)	Roswell, NM	06/19/95	05/25/95	31,136	Wiring Harnesses.
Carter-Wallace, Inc. (OCAW)	East Windsor, NJ	06/19/95	06/09/95	31,137	Vitro Diagnostic Devices.
Layton Sportswear (Co.)	Layton, UT	06/19/95	06/02/95	31,138	Men & Boy's Sweat Shirts, Sweat Pants.
Macclenny Products, Inc. (ACTWU)	Macclenny, FL	06/19/95	06/03/95	31,139	zMen's Suits/Sport Coats, Slacks.
Western Gas Resources (Wrks)	Gillette, WY	06/19/95	06/06/95	31,140	Natural Gas.
Colorado Gas Compression, Inc. (Wkrs).	Shawnee, OK	06/19/95	05/31/95	31,141	Propane & Other Gases.
Downhole Pressure Service, Inc. (Co.)	Casper, WY	06/19/95	06/07/95	31,142	Gas Pipeline Services.
Levi Strauss & Co. (Wkrs)	El Paso, TX	06/19/95	05/23/95	31,143	Print Garment Care Labels.
Fruit of the Loom (Wkrs)	Jamestown, KY	06/19/95	05/30/95	31,144	Hooded Sweatshirts.
Moore Business Forms & Systems Div. (Co.).	Buckhannon, WV	06/19/95	02/20/95	31,145	Business Forms.
Olivetti North America (Wkrs)	Liberty Lake, WA	06/19/95	06/06/95	31,146	Computer Systems Software.
Summit Station Manufacturing, Inc. (Wkrs).	Pine Grove, PA	06/19/95	06/06/95	31,147	Men/Women's Sports Outwear.
Delta Drilling Co. (Co.)	Tyler, TX	06/19/95	06/06/95	31,148	Crude Oil & Natural Gas.
SCT Yarns, Inc. (Co.)	Jefferson, GA	06/19/95	06/06/95	31,149	Textile Yarn.
SCT Yarns, Inc. (Co.)	Piedmont, AL	06/19/95	06/06/95	31,150	Textile Yarns.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Caffall Brothers, Forest Products (Wkrs).	Oregon City, OR	06/19/95	06/13/95	31,151	Softwood Lumber.
Lake Manufacturing (Co.)	Lake, MS	06/19/95	06/13/95	31,152	Ladies' & Children's Turtle Neck Shirts.

[FR Doc. 95–16057 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–30–M

Occupational Safety and Health Administration

[Docket No. NRTL–4–93]

Underwriters Laboratories Incorporated

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

ACTIONS: Notice of renewal of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on Underwriters Laboratories Incorporated for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Underwriters Laboratories Incorporated (UL) which made application pursuant to 29 CFR 1910.7 for renewal of its recognition as a Nationally Recognized Testing Laboratory, has had its recognition renewed as an NRTL for the equipment or material listed below.

The addresses of the laboratories covered by this application are:

333 Pfingsten Road, Northbrook, Illinois 60062
1285 Walt Whitman Road, Melville, Long Island, New York 11747
1655 Scott Boulevard, Santa Clara, California 95050
12 Laboratory Drive, P.O. Box 13995 Research Triangle Park, North Carolina 27709
2600 N. W. Lake Road, Camas, Washington 98607
UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong
UL International Services, Ltd. 3rd Floor, No. 35 Chung Yang South Road, Section 2, Pei Tou 11237, Taipei, Taiwan

Background

When OSHA published its standard for NRTLs at 29 CFR 1910.7, it temporarily recognized Underwriters Laboratories Incorporated (UL) and Factory Mutual Research Corporation (FMRC). Both organizations had already been referenced by the Occupational Safety and Health Administration (OSHA) as acceptable organizations for testing or certifying certain workplace equipment and materials. Appendix A of section 1910.7 stated, in part, that Underwriters Laboratories Incorporated was recognized temporarily as a nationally recognized testing laboratory by the Assistant Secretary for a five-year period from June 13, 1988 through June 13, 1993. At the end of this five-year period UL was required to apply for renewal of that OSHA recognition utilizing certain specified procedures. UL applied for renewal of its recognition as an NRTL within the specified time frame (application dated September 30, 1992) and retained temporary recognition pending OSHA's final decision in this renewal process. The final on-site review reports, consisting of on-site evaluations of UL testing facilities, including administrative and technical practices, located in Northbrook, IL; Melville, L.I., NY; Research Triangle Park, NC; Santa Clara, CA; Taipei, Taiwan (2 sites); Hong Kong; and Tokyo, Japan (not UL owned) (Exhibit 2B, dated September 14, 1994), and in Camas, WA (Exhibit 2C, dated March 10, 1995), and the OSHA staff recommendation, were subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of UL's application for renewal together with a positive preliminary finding was published in the **Federal Register** on March 29, 1995 (60 FR 16171). Interested parties were invited to submit comments.

There was one response to the **Federal Register** notice of the UL application and preliminary finding (Docket No. NRTL–4–93). The response, from UL (Ex. 9–1), suggested that OSHA did not fully and correctly identify the scope of UL's recognition.

UL has a program for testing and evaluation that involves independent organizations that supply data to it. UL tests products for, and accepts test data from, independent, internationally recognized laboratories pursuant to the terms of various memoranda of understanding or cooperative agreements. The laboratory developing the test data conducts these tests according to the appropriate nationally recognized standards. The program requirements include the assessment of the laboratory's quality program, physical resources, equipment, personnel, independence, and data recording procedures for conformance with international and UL criteria. Each laboratory is subject to a formal initial assessment to determine its capability and qualifications to perform testing on a category-by-category, or standard-by-standard basis. Each laboratory facility is reassessed on a regular basis to verify continued conformance with program criteria.

This program must be consistent with the requirements of the second procedure titled ''Acceptance of Testing Data From Independent Organizations, Other Than NRTLs'', as detailed in the March 9, 1995 **Federal Register** document, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'' (60 FR 12980).

UL also states that it may accept components tested at other laboratories after review of the test data and other relevant documentation and any additional evaluation necessary. The evaluation includes assurance that the other laboratory's performance meets the level that UL would provide had it performed the service.

The Occupational Safety and Health Administration has evaluated the entire record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or

accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review reports indicate that UL has facilities, personnel, and testing equipment which are appropriate for the areas of recognition it seeks. The various laboratories have available all of the general test equipment to perform the testing required by the standards. If any additional test equipment is necessary, it will be purchased or leased as required.

The various UL facilities have adequate equipment calibration procedures. Typical departments maintain laboratory equipment logs which include information relative to repair, routine maintenance, and calibration.

Published standards, laboratory procedural guides, laboratory operations manuals, engineering department manuals, and test data sheets collectively specify records that are to be maintained for an investigation. Laboratory procedural guides detail the procedures to be followed for given tests. Details such as specific equipment (and alternates) which UL uses to conduct the test, and instructions including steps to be used in conducting the tests, are detailed within these documents.

Where these procedural guides have not yet been developed, technicians are guided by the UL standard which illustrates the test, their knowledge of tests required for the product, data sheets (which contain a ''method'' section and lay out basic procedures), and by consultation with the project handler.

No single quality assurance manual exists as such. The size and complexity of UL causes the quality assurance system to be dictated by the corporate laboratory operations manuals and the engineering department manuals. The engineering department manuals provide policies, procedures, definitions, and responsibilities encompassing a wide variety of issues.

The laboratory operations manuals identify areas of responsibilities within the laboratory and govern the laboratory quality system. They identify policies and describe the procedures and controls used by engineering and laboratory staff in performing tests and reporting of test results. They also address areas such as the identification of applicable tests, maintenance and calibration of equipment, procedures and practices for conducting tests, personnel training and qualification, data recording, reporting and review, maintenance of records, feedback and corrective action procedures, and internal audit programs. Such audits are carried out at random and are unannounced. Action is taken to correct performance that is below acceptable levels. The laboratory operations manuals specify the procedures associated with corrective actions, which are initiated immediately upon identification of the deficient conditions.

Follow-Up and Field Inspection Procedures

Section 1910.7(b)(2) requires that the NRTL provide certain follow-up procedures, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label.

A written follow-up program exists. Field representatives make periodic unannounced examinations or tests of products at the factory and may, from time to time, select samples from the factory, the open market, or elsewhere to be sent to a UL testing station for examination or test to determine compliance with UL's requirements. The determination of the frequency of audits is documented and depends on which of UL's follow-up service is implemented. In any event, a minimum of four unannounced visits per year is required.

The base document for follow-up inspections is the follow-up service procedure. This document includes information regarding the use of the UL mark on the product and the conduct of follow-up service.

In situations involving the establishment of follow-up services for a new manufacturer or for the addition of a new product category for an existing manufacturer, a so-called initial production inspection may be required. This inspection is intended to assure that each manufacturer of a certified product is producing the product in accordance with the requirements of a follow-up service procedure commencing with the very first production run. Under this program, the manufacturer may not ship products bearing a UL mark until the initial production inspection has been successfully completed, and products actually being produced are found to comply with the requirements of the follow-up service procedure.

Depending upon the type of service, UL marks are either obtained through UL, or manufacturers are provided with a control number for all their products under a particular product category and purchase the UL mark directly from an authorized printer or supplier once UL has evaluated the original label design and authorizes the format of the mark. Maintaining control of these marks, as well as varying the issue or serial numbers as they are printed, enables UL to monitor and track closely the usage of its mark, to whom they have been released, and the approximate date of their use.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

OSHA believes, based upon an examination of the application, that Underwriters Laboratories Inc. is independent of employers subject to the tested equipment requirements and of any manufacturers or vendors of equipment or materials being tested for these purposes, within the meaning of 29 CFR 1910.7(b)(3).

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

UL's application as well as the on-site review reports indicate that UL does maintain effective procedures for producing creditable findings and reports that are objective.

Published standards, laboratory procedural guides, laboratory operations manuals, engineering department manuals, and test data sheets collectively specify records that are to be maintained for an investigation.

Certification reports contain the following information: name and address of the applicant; name and address of the testing location if different from the laboratory; a unique identifier along with an issue date and file number for the report; a detailed description of the product including drawings and photographs; specific conditions for use of the product when needed; construction and testing narratives which describe how the

product complies with the standard; a description of the testing performed and the results of the tests; a statement of measurement uncertainty when appropriate; and an explanation of rationale for any deviations, additions or exclusions from the standard.

Preparation of the certification report preparation is the responsibility of the project engineer. A complete review is conducted by a second engineer. Signatures of the responsible engineer and reviewer, along with other staff involved in the report preparation, appear in the report. Signatures of laboratory staff involved in the testing and data collection appear on the data sheets.

As to complaint handling, if clients disagree with a decision relating to engineering or inspection they can present and discuss their views with the involved engineer, field representative or supervisor in an effort to resolve the disagreement. If the matter cannot be satisfactorily resolved at that level, they are free to appeal up through the managerial chain to the office of the president of UL.

Review procedures are also in place to address complaints from end users and others, and are described in UL's field report program.

Test Standards

Section 1910.7 requires that an NRTL use ''appropriate test standards'', which are defined, in part, to include any standard that is currently designated as an American National Standards Institute (ANSI) safety designated product standard or an American Society for Testing and Materials (ASTM) test standard used for evaluation of products or materials. As to the non-ANSI, UL test standards for which UL has applied to test products to, OSHA previously had examined the status of the Underwriters Laboratories Inc. Standards for Safety and, in particular, the method of their development, revision and implementation, and had determined that they are appropriate test standards under the criteria described in 29 CFR 1910.7(c) (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; they are compatible and remain current with periodic revisions of applicable national codes and installation standards; and they are developed by a standards developing organization under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

Programs

As discussed in the **Federal Register** notice (60 FR 16171), UL operates a variety of services and organizational programs. The following programs were previously examined and found to be acceptable to OSHA on the basis of the procedures and specific criteria as detailed in 60 FR 12980, March 9, 1995, ''Nationally Recognized Testing Laboratories; Clarification of the Types of Programs and Procedures'' (Exhibit 8), describing the types of programs and procedures that NRTLs may engage in under the OSHA/NRTL program.

Basic Program—This program is one in which UL performs all of the necessary product testing and evaluation in-house prior to issuing a certification.

Witnessed Test Data Program—This program involves the use of UL Technical Personnel at a manufacturer's test site to witness testing for products that will be listed by UL. The manufacturer's facilities used for this purpose are qualified by the UL engineering department. The follow-up program is the normal one for that product and manufacturer (Ex. 2B, Santa Clara Report, Section 11).

Client Agent Program (CAP)—This program qualifies intermediaries that interface between UL and the client. This usually involves overseas clients utilizing US based agents. This program qualifies the intermediaries in administrative areas, technical areas, or in a combination of both. An intermediary that is qualified in the technical areas can perform testing on behalf of the client. The Client Agent Program does not prohibit an agent from providing technical advice on modifications to the product in order to meet the requirements of the standard. However, the CAP program is not intended to qualify agents in providing technical advice to clients. Administratively qualified intermediaries provide documentation, drawing, and translation support for the client.

China National Import & Export Commodities Inspection Corporation (CCIC) Inspection Program—The CCIC is a Chinese government organization that is retained by the UL Inspection Services to perform follow-up inspections in China. This inspection program is under the oversight control of UL personnel through the Hong Kong facility, and the International Inspection Services Department (Ex. 2b, Melville Report, Sections 8 & 13).

National Certification Body (NCB)—Underwriters Laboratories is one of five NRTLs that are participants in the International Electrotechnical Commission (IEC) Certification Body (CB) Scheme. This is an international program that allows laboratories accredited as Certified Bodies to exchange test reports with each other during the process of certifying products. The IEC has allowed NRTLs to participate in this Scheme because they have been accredited by OSHA. The IEC requires governmental oversight for participants.

Client Test Data Program (CTDP)—This program is the most extensively used and the basic program that involves client participation. This program involves the systematic qualification of the client by reviewing their laboratory, environmental controls, testing instrumentation, electrical power system, the client personnel involved in the program, the access to the latest UL standards, mutual testing, confidence building and the correlation of the testing packages with UL test results. Specific test information is required to be submitted and UL performs verification testing at intervals not known by the participant. There is no change in surveillance conducted by UL's follow-up services. There is an additional review conducted by UL engineering personnel that is conducted at least yearly to assess the participant's continued capability to be in the program. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Compliance Management and Product Assurance Program (COMPASS)—This program is a voluntary process that allows qualified manufacturers that have successfully utilized the CTDP Program to perform limited self evaluation and testing within specified categories.

For minor changes to already listed products, the client reviews the changes and performs any needed tests, and continues to use the listing mark. The client submits the documentation to UL for review. If the product does not comply, the manufacturer is required to remove the UL marks. This procedure for handling minor changes was designed to handle the real life situations, such as a purchasing department electing to purchase an alternate switch. Rather than wait for a variation notice to be issued by UL's follow-up services representative, this path serves to keep the client and UL in close contact between inspections. Minor changes are defined as modifications which involve the use of an alternate or optional component in a

previously accepted product. An example is the substitution of a comparable switch from a different manufacturer.

For major changes or new products the client must submit a sample and all documentation to UL for review. Depending upon the situation, UL may determine that the nature of the change and experience with the client and testing associated are such that additional verification testing is not necessary. In this situation, UL will authorize the use of the listing mark.

UL may determine that immediate verification testing is not needed. In this situation, the authorization to use the Listing mark is given but verification testing is conducted later. In all cases, verification testing is conducted for new products. In all situations where verification testing is needed, if correlation does not exist, the listing marks must be removed.

The follow-up program and engineering department audits are the same as with CTDP, and an additional audit of the client's quality system is performed. Both CDTP and COMPASS involve UL making a determination of the compliance of the product with the standard at some point in the process. (See Ex. 2B, Research Triangle Park and Santa Clara Reports, Section 11).

Total Certification Program (TCP)—This program parallels the manufacturer and UL in a combined evaluation of products. This is in contrast to the sequential process that is used under the COMPASS program where the manufacturer tests and evaluates and then submits the information to UL.

The program involves the testing and evaluation of a product by the manufacturer, and also the manufacturer's determination of compliance with a standard. The manufacturer is subject to continuous involvement with UL throughout the design and production of the product. UL conducts regular audits throughout the process including verification testing. Similar to the COMPASS program, the manufacturer must qualify for this program by demonstrating the ability to test and evaluate a product and it must have a viable quality assurance program, in addition to having the personnel and equipment to provide creditable results. In all cases, it is UL who authorizes the use of the listing mark. The manufacturer is audited four times a year by the UL engineering staff, and twice a year the manufacturer's quality assurance program is reviewed. Follow-up inspectors continue to conduct follow-ups.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, and the OSHA staff finding including the on-site reports, OSHA finds that Underwriters Laboratories, Inc. has met the requirements of 29 CFR 1910.7 to have its recognition renewed by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, Underwriters Laboratories', Inc. recognition as a Nationally Recognized Testing Laboratory is hereby renewed subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

UL has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction. These standards are all considered appropriate test standards under 29 CFR 1910.7(c):

ANSI Z21.1b—Household Cooking Gas Appliances
ANSI Z21.5.1—Gas Clothes Dryers—Type 1
ANSI Z21.5.2—Gas Clothes Dryers—Type 2
ANSI Z21.10.1—Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2—Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3—Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1—Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2—Gas-Fired Room Heaters—Unvented Room Heaters
ANSI Z21.12—Listing Requirements for Draft Hoods
ANSI Z21.13—Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14—Approval Requirements for Industrial Gas Boilers
ANSI Z21.15—Manually Operated Gas Valves
ANSI Z21.16—Gas Unit Heaters
ANSI Z21.17—Domestic Gas Conversion Burners
ANSI Z21.18—Gas Appliance Pressure Regulators
ANSI Z21.19—Refrigerators Using Gas Fuel
ANSI Z21.20—Automatic Gas Ignition Systems and Components
ANSI Z21.21—Automatic Valves for Gas Appliances
ANSI Z21.22—Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23—Gas Appliance Thermostats
ANSI Z21.29—Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35—Gas Filters on Appliances
ANSI Z21.37—Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1—Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41—Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42—Gas-Fired Illuminating Appliances
ANSI Z21.44—Gas-Fired Gravity and Fan Type Direct Vent Wall Furnaces
ANSI Z21.45—Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47—Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48—Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49—Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.53—Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54—Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55—Gas-Fired Sauna Heaters
ANSI Z21.56—Gas-Fired Pool Heaters
ANSI Z21.58—Outdoor Cooking Gas Appliances
ANSI Z21.61—Gas-Fired Toilets
ANSI Z21.64—Direct Vent Central Furnaces
ANSI Z21.66—Automatic Vent Damper Devices for Use With Gas-Fired Appliances
ANSI Z21.69—Connectors for Movable Gas Appliances
ANSI Z21.74—Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76—Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
ANSI Z83.3—Gas Utilization Equipment in Large Boilers
ANSI Z83.4—Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6—Gas-Fired Infrared Heaters
ANSI Z83.8—Gas Unit Heaters
ANSI Z83.9—Gas-Fired Duct Furnaces
ANSI Z83.10—Separated Combustion System Central Furnaces
ANSI Z83.11—Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.12—Gas Food Service Equipment—Baking and Roasting Ovens
ANSI Z83.13—Gas Food Service Equipment—Deep Fat Fryers
ANSI Z83.14—Gas Food Service Equipment—Counter Appliances
ANSI Z83.15—Gas Food Service Equipment—Kettles, Steam Cookers, and Steam Generators
ANSI Z83.16—Gas-Fired Unvented Commercial and Industrial Heaters
ANSI Z83.17—Direct Gas Fired Door Heaters
ANSI Z83.18—Direct Gas Fired Industrial Air Heaters
ANSI/UL 1—Flexible Metal Conduit
ANSI/UL 3—Flexible Nonmetallic Tubing for Electric Wiring

ANSI/UL 4—Armored Cable
ANSI/UL 5—Surface Metal Raceways and Fittings
UL 6—Rigid Metal Conduit
ANSI/UL 8—Foam Fire Extinguishers
ANSI/UL 9—Fire Tests of Window Assemblies
ANSI/UL 10A—Tin-Clad Fire Doors
ANSI/UL 10B—Fire Tests of Door Assemblies
UL 13—Power-Limited Circuit Cables
ANSI/UL 14B—Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors
ANSI/UL 14C—Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
ANSI/UL 17—Vent or Chimney Connector Dampers for Oil-Fired Appliances
ANSI/UL 20—General-Use Snap Switches
ANSI/UL 21—LP-Gas Hose
ANSI/UL 22—Amusement and Gaming Machines
ANSI/UL 25—Meters for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 30—Metal Safety Cans
ANSI/UL 33—Heat Responsive Links for Fire-Protection Service
UL 38—Manually Actuated Signalling Boxes for Use With Fire Protective Signalling Systems
ANSI/UL 44—Rubber-Insulated Wires and Cables
ANSI/UL 45—Portable Electric Tools
ANSI/UL 48—Electric Signs
ANSI/UL 50—Enclosures for Electrical Equipment
ANSI/UL 51—Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
ANSI/UL 58—Steel Underground Tanks for Flammable and Combustible Liquids
ANSI/UL 62—Flexible Cord and Fixture Wire
ANSI/UL 65—Electric Wired Cabinets
ANSI/UL 67—Electric Panelboards
ANSI/UL 69—Electric Fence Controllers
ANSI/UL 73—Electric-Motor-Operated Appliances
ANSI/UL 79—Power-Operated Pumps for Petroleum Product Dispensing Systems
ANSI/UL 80—Steel Inside Tanks for Oil Burner Fuel
ANSI/UL 82—Electric Gardening Appliances
ANSI/UL 83—Thermoplastic-Insulated Wires and Cables
ANSI/UL 87—Power-Operated Dispensing Devices for Petroleum Products
ANSI/UL 92—Fire Extinguisher and Booster Hose
ANSI/UL 94—Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
ANSI/UL 96—Lightning Protection Components
UL 98—Enclosed and Dead-Front Switches
UL 104—Elevator Door Locking Devices and Contacts
UL 109—Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use
ANSI/UL 122—Photographic Equipment
ANSI/UL 123—Oxy-Fuel Gas Torches
UL 125—Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
ANSI/UL 130—Electric Heating Pads
UL 132—Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141—Garment Finishing Appliances
ANSI/UL 142—Steel Aboveground Tanks for Flammable and Combustible Liquids
ANSI/UL 144—Pressure Regulating Valves for LP-Gas
ANSI/UL 147—LP- and MPS-Gas Torches
UL 147A—Nonrefillable (Disposable) Type Fuel Gas Cylinder Assemblies
UL 147B—Nonrefillable (Disposable) Type Metal Container Assemblies for Butane
ANSI/UL 150—Antenna Rotators
ANSI/UL 153—Portable Electric Lamps
ANSI/UL 154—Carbon Dioxide Fire Extinguishers
UL 155—Tests for Fire Resistance of Vault and File Room Doors
UL 162—Foam Equipment and Liquid Concentrates
ANSI/UL 174—Household Electric Storage-Tank Water Heaters
ANSI/UL 180—Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 181—Factory-Made Air Ducts and Air Connectors
ANSI/UL 183—Manufactures Wiring Systems
ANSI/UL 187—X-Ray Equipment
ANSI/UL 193—Alarm Valves for Fire-Protection Service
UL 194—Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
ANSI/UL 197—Commercial Electric Cooking Appliances
ANSI/UL 198B—Class H Fuses
ANSI/UL 198C—High-Interrupting-Capacity Fuses, Current Limiting Type
ANSI/UL 198D—High-Interrupting-Capacity Class K Fuses
ANSI/UL 198E—Class R Fuses
ANSI/UL 198F—Plug Fuses
ANSI/UL 198G—Fuse for Supplementary Overcurrent Protection
ANSI/UL 198H—Class T Fuses
ANSI/UL 198L—DC Fuses for Industrial Use
ANSI/UL 199—Automatic Sprinklers for Fire-Protection Service
ANSI/UL 203—Pipe Hanger Equipment for Fire-Protection Service
ANSI/UL 207—Nonelectrical Refrigerant Containing Components and Accessories
ANSI/UL 209—Cellular Metal Floor Electrical Raceways and Fittings
UL 213—Rubber Gasketed Fittings for Fire-Protection Service
ANSI/UL 217—Single and Multiple Station Smoke Detectors
ANSI/UL 224—Extruded Insulating Tubing
UL 228—Door Closers-Holders, and Integral Smoke Detectors
ANSI/UL 244A—Solid-State Controls for Appliances
ANSI/UL 250—Household Refrigerators and Freezers
ANSI/UL 252—Compressed Gas Regulators
UL 260—Dry Pipe and Deluge Valves for Fire-Protection Service
UL 262—Gate Valves for Fire-Protection Service
ANSI/UL 268—Smoke Detectors for Fire Protective Signalling Systems
ANSI/UL 268A—Smoke Detectors for Duct Application
ANSI/UL 291—Automated Teller Systems
ANSI/UL 294—Access Control System Units
ANSI/UL 296—Oil Burners
UL 296A—Waste Oil-Burning Air-Heating Appliances
UL 297—Portable Medium-Pressure Acetylene Generators
ANSI/UL 298—Portable Electric Hand Lamps
ANSI/UL 299—Dry Chemical Fire Extinguishers
ANSI/UL 303—Refrigeration and Air-Conditioning Condensing and Compressor Units
UL 305—Panic Hardware
ANSI/UL 310—Electrical Quick-Connect Terminals
ANSI/UL 312—Check Valves for Fire-Protection Service
ANSI/UL 325—Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 330—Gasoline Hose
ANSI/UL 331—Strainers for Flammable Fluids and Anhydrous Ammonia
ANSI/UL 343—Pumps of Oil-Burning Appliances
ANSI/UL 346—Waterflow Indicators for Fire Protective Signaling Systems
ANSI/UL 347—High-Voltage Industrial Control Equipment
ANSI/UL 351—Electrical Rosettes
ANSI/UL 353—Limit Controls
ANSI/UL 355—Electric Cord Reels
ANSI/UL 360—Liquid Tight Flexible Steel Conduit
ANSI/UL 363—Knife Switches
ANSI/UL 365—Police Station Connected Burglar Alarm Units and Systems
ANSI/UL 372—Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378—Draft Equipment
ANSI/UL 385—Play Pipes for Water Supply Testing in Fire Protection Service
ANSI/UL 393—Indicating Pressure Gauges for Fire Protection Service
ANSI/UL 399—Drinking-Water Coolers
UL 404—Gauges, Indicating Pressure, for Compressed Gas Service
UL 407—Manifolds for Compressed Gases
UL 408—Stationary Medium Pressure Acetylene Generators
UL 409—Stationary Low-Pressure Acetylene Generators
ANSI/UL 412—Refrigeration Unit Coolers
ANSI/UL 414—Electrical Meter Sockets
UL 416—Refrigerated Medical Equipment
ANSI/UL 427—Refrigerating Units
ANSI/UL 429—Electrically Operated Valves
ANSI/UL 430—Electric Waste Disposers
ANSI/UL 443—Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444—Communications Cables
ANSI/UL 448—Pumps for Fire Protection Service
ANSI/UL 452—Antenna Discharge Units
ANSI/UL 464—Audible Signal Appliances
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 466—Electric Scales
ANSI/UL 467—Electrical Grounding and Bonding Equipment
ANSI/UL 469—Musical Instruments and Accessories
ANSI/UL 471—Commercial Refrigerators and Freezers
ANSI/UL 474—Dehumidifiers
ANSI/UL 482—Portable Sun/Heat Lamps
ANSI/UL 484—Room Air Conditioners

ANSI/UL 486A—Wire Connectors and Soldering Lugs for Use With Copper Conductors
ANSI/UL 486B—Wire Connectors for Use With Aluminum Conductors
ANSI/UL 486C—Splicing Wire Connectors
ANSI/UL 486D—Insulated Wire Connectors for Use With Underground Conductors
ANSI/UL 486E—Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 493—Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
ANSI/UL 495—Power-Operated Dispensing Devices for LP-Gas
ANSI/UL 496—Edison-Base Lampholders
ANSI/UL 497—Protectors for Communication Circuits
UL 497A—Secondary Protectors for Communication Circuits
ANSI/UL 497B—Protectors for Data Communication and Fire Alarm Circuits
ANSI/UL 498—Attachment Plugs and Receptacles
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 507—Electric Fans
ANSI/UL 508—Electric Industrial Control Equipment
ANSI/UL 510—Insulating Tape
ANSI/UL 511—Porcelain Electrical Cleats, Knobs, and Tubes
ANSI/UL 512—Fuseholders
ANSI/UL 514A—Metallic Outlet Boxes, Electrical
ANSI/UL 514B—Fittings for Conduit and Outlet Boxes
ANSI/UL 514C—Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
ANSI/UL 519—Impedance-Protected Motors
ANSI/UL 521—Heat Detectors for Fire Protective Signaling Systems
ANSI/UL 525—Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
ANSI/UL 539—Single and Multiple Station Heat Detectors
ANSI/UL 541—Refrigerated Vending Machines
ANSI/UL 542—Lampholders, Starters, and Starter Holders for Fluorescent Lamps
ANSI/UL 543—Impregnated-Fiber Electrical Conduit
UL 544—Electric Medical and Dental Equipment
ANSI/UL 547—Thermal Protectors for Electric Motors
ANSI/UL 551—Transformer-Type Arc-Welding Machines
ANSI/UL 555—Fire Dampers
UL 555S—Leakage Rated Dampers for Use in Smoke Control Systems
ANSI/UL 558—Industrial Trucks, Internal Combustion Engine-Powered
ANSI/UL 559—Heat Pumps
ANSI/UL 560—Electric Home-Laundry Equipment
ANSI/UL 561—Floor Finishing Machines
ANSI/UL 563—Ice Makers
UL 565—Liquid Level Gauges and Indicators for Anhydrous Ammonia and LP-Gas
ANSI/UL 567—Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
ANSI/UL 569—Pigtails and Flexible Hoses
ANSI/UL 574—Electric Oil Heater
ANSI/UL 603—Power Supplies for Use With Burglar-Alarm Systems
ANSI/UL 609—Local Burglar-Alarm Units and Systems
ANSI/UL 611—Central-Station Burglar-Alarm Systems
ANSI/UL 621—Ice Cream Makers
ANSI/UL 626—2–1/2 Gallon Stored Pressure Water Type Fire Extinguishers
ANSI/UL 632—Electrically Actuated Transmitters
ANSI/UL 634—Connectors and Switches for Use With Burglar-Alarm Systems
ANSI/UL 636—Holdup Alarm Units and Systems
ANSI/UL 639—Intrusion-Detection Units
ANSI/UL 644—Container Assemblies for LP-Gas
ANSI/UL 651—Schedule 40 and 80 Rigid PVC Conduit
ANSI/UL 651A—Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664—Commercial (Class IV) Electric Dry-Cleaning Machines
ANSI/UL 674—Electric Motors and Generators for Use in Hazardous (Classified) Locations
ANSI/UL 676—Underwater Lighting Fixtures
ANSI/UL 680—Emergency Vault Ventilators and Vault Ventilating Parts
ANSI/UL 681—Installation and Classification of Mercantile and Bank Burglar-Alarm Systems
ANSI/UL 696—Electric Toys
ANSI/UL 697—Toy Transformers
ANSI/UL 698—Industrial Control Equipment for Use in Hazardous (Classified) Locations
ANSI/UL 705—Power Ventilators
UL 710—Grease Extractors for Exhaust Ducts
ANSI/UL 711—Rating and Fire Testing of Fire Extinguishers
ANSI/UL 719—Nonmetallic Sheathed Cables
ANSI/UL 726—Oil-Fired Boiler Assemblies
ANSI/UL 727—Oil-Fired Central Furnaces
ANSI/UL 729—Oil-Fired Floor Furnaces
ANSI/UL 730—Oil-Fired Wall Furnaces
ANSI/UL 731—Oil-Fired Unit Heaters
ANSI/UL 732—Oil-Fired Water Heaters
UL 733—Oil-Fired Air Heaters and Direct-Fired Heaters
ANSI/UL 746A—Polymeric Materials—Short Term Property Evaluations
ANSI/UL 746B—Polymeric Materials—Long Term Property Evaluations
ANSI/UL 746C—Polymeric Materials—Use in Electrical Equipment Evaluations
ANSI/UL 746E—Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
ANSI/UL 749—Household Dishwashers
ANSI/UL 751—Vending Machines
ANSI/UL 753—Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
ANSI/UL 756—Coin and Currency Changers and Actuators
UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 773—Plug-In Locking-Type Photocontrols for Use With Area Lighting
ANSI/UL 773A—Nonindustrial Photoelectric Switches for Lighting Control
UL 775—Graphic Arts Equipment
ANSI/UL 778—Motor-Operated Water Pumps
ANSI/UL 781—Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
ANSI/UL 783—Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Group C and D
UL 795—Commercial-Industrial Gas-Heating Equipment
ANSI/UL 796—Printed-Wiring Boards
ANSI/UL 797—Electrical Metallic Tubing
UL 810—Capacitors
ANSI/UL 813—Commercial Audio Equipment
ANSI/UL 814—Gas-Tube-Sign and Ignition Cable
ANSI/UL 817—Cord Sets and Power-Supply Cords
ANSI/UL 823—Electric Heaters for Use in Hazardous (Classified) Locations
ANSI/UL 826—Household Electric Clocks
ANSI/UL 827—Central Stations for Watchman, Fire-Alarm, and Supervisory Services
ANSI/UL 834—Heating, Water Supply, and Power Boilers—Electric
UL 842—Valves for Flammable Fluids
ANSI/UL 844—Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
ANSI/UL 845—Electric Motor Control Centers
ANSI/UL 854—Service Entrance Cable
ANSI/UL 857—Electric Busways and Associated Fittings
ANSI/UL 858—Household Electric Ranges
UL 858A—Safety-Related Solid-State Controls for Electric Ranges
ANSI/UL 859—Personal Grooming Appliance
UL 860—Pipe Unions for Flammable and Combustible Fluids and Fire Protection Service
ANSI/UL 863—Electric Time-Indicating and -Recording Appliances
ANSI/UL 864—Control Units for Fire-Protective Signaling Systems
ANSI/UL 867—Electrostatic Air Cleaners
ANSI/UL 869—Electrical Service Equipment
ANSI/UL 869A—Reference Standard for Service Equipment
ANSI/UL 870—Wireways, Auxiliary Gutters, and Associated Fittings
ANSI/UL 873—Electrical Temperature-Indicating and -Regulating Equipment
ANSI/UL 875—Electric Dry Bath Heaters
ANSI/UL 877—Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
ANSI/UL 879—Electrode Receptacles for Gas-Tube Signs
ANSI/UL 883—Fan-Coil Units and Room-Fan Heater Units
ANSI/UL 884—Underfloor Electrical Raceways and Fittings
ANSI/UL 886—Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
ANSI/UL 887—Delayed-Action Timelocks
ANSI/UL 891—Dead-Front Electrical Switchboards

ANSI/UL 894—Switches for Use in Hazardous (Classified) Locations
ANSI/UL 900—Test Performance of Air-Filter Units
ANSI/UL 910—Test Method for Fire and Smoke Characteristics of Electrical and Optical-Fiber Cables
ANSI/UL 913—Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
ANSI/UL 916—Energy Management Equipment
ANSI/UL 917—Clock-Operated Switches
ANSI/UL 921—Commercial Electric Dishwashers
ANSI/UL 923—Microwave Cooking Appliances
ANSI/UL 924—Emergency Lighting and Power Equipment
ANSI/UL 935—Fluorescent-Lamp Ballasts
ANSI/UL 943—Ground-Fault Circuit Interrupters
ANSI/UL 961—Hobby and Sports Equipment
ANSI/UL 964—Electrically Heating Bedding
ANSI/UL 969—Marking and Labeling Systems
ANSI/UL 977—Fused Power-Circuit Devices
ANSI/UL 982—Motor-Operated Food Preparing Machines
ANSI/UL 983—Surveillance Cameras
ANSI/UL 984—Hermetic Refrigerant Motor-Compressors
ANSI/UL 987—Stationary and Fixed Electric Tools
UL 991—Tests for Safety-Related Controls Employing Solid-State Devices
ANSI/UL 998—Humidifiers
ANSI/UL 1002—Electrically Operated Valve for Use in Hazardous (Classified) Locations
ANSI/UL 1004—Electric Motors
ANSI/UL 1005—Electric Flatirons
ANSI/UL 1008—Automatic Transfer Switches
ANSI/UL 1010—Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
ANSI/UL 1012—Power Supplies
ANSI/UL 1017—Electric Vacuum Cleaning Machines and Blower Cleaners
ANSI/UL 1018—Electric Aquarium Equipment
ANSI/UL 1020—Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022—Line Isolated Monitors
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1026—Electric Household Cooking and Food-Serving Appliances
ANSI/UL 1028—Electric Hair-Clipping and -Shaving Appliances
ANSI/UL 1029—High-Intensity Discharge Lamp Ballasts
ANSI/UL 1030—Sheathed Heater Elements
ANSI/UL 1034—Burglary Resistant Electric Locking Mechanisms
ANSI/UL 1037—Antitheft Alarms and Devices
ANSI/UL 1042—Electric Baseboard Heating Equipment
UL 1047—Isolated Power Systems Equipment
ANSI/UL 1053—Ground-Fault Sensing and Relaying Equipment
ANSI/UL 1054—Special-Use Switches
ANSI/UL 1058—Halogenated Agent Extinguishing System Units
UL 1059—Terminal Blocks
ANSI/UL 1062—Unit Substations
ANSI/UL 1063—Machine-Tool Wires and Cables
UL 1066—Low-Voltage AC and DC power Circuit Breakers Used in Enclosures
ANSI/UL 1069—Hospital Signaling and Nurse Call Equipment
ANSI/UL 1072—Medium Voltage Power Cables
ANSI/UL 1076—Proprietary Burglar-Alarm Units and Systems
ANSI/UL 1077—Supplementary Protectors for Use in Electrical Equipment
ANSI/UL 1081—Electric Swimming Pool Pumps, Filters and Chlorinators
ANSI/UL 1082—Household Electric Coffee Makers and Brewing-Type Appliances
ANSI/UL 1083—Household Electric Skillets and Frying-Type Appliances
ANSI/UL 1086—Household Trash Compactors
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1088—Temporary Lighting Strings
ANSI/UL 1090—Electric Snow Movers
ANSI/UL 1091—Butterfly Valves for Fire Protection Service
ANSI/UL 1093—Halogenated Agent Fire Extinguishers
ANSI/UL 1096—Electric Central Air-Heating Equipment
ANSI/UL 1097—Double Insulation Systems for Use in Electrical Equipment
ANSI/UL 1203—Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206—Electric Commercial Clothes-Washing Equipment
ANSI/UL 1207—Sewage Pumps for Use in Hazardous (Classified) Locations
ANSI/UL 1230—Amateur Movie Lights
UL 1236—Electric Battery Chargers
ANSI/UL 1238—Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240—Electric Commercial Clothes-Drying Equipment
ANSI/UL 1241—Junction Boxes for Swimming Pool Lighting Fixtures
ANSI/UL 1242—Intermediate Metal Conduit
UL 1244—Electrical and Electronic Measuring and Testing Equipment
UL 1254—Pre-Engineered Dry Chemical Extinguishing System Units
ANSI/UL 1261—Electric Water Heaters for Pools and Tubs
ANSI/UL 1262—Laboratory Equipment
UL 1270—Radio Receivers, Audio Systems, and Accessories
ANSI/UL 1277—Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278—Movable and Wall- or Ceiling-Hung Electric Room Heaters
ANSI/UL 1283—Electromagnetic-Interference Filter
ANSI/UL 1286—Office Furnishings
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1313—Nonmetallic Safety Cans for Petroleum Products
ANSI/UL 1314—Special-Purpose Containers
ANSI/UL 1316—Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
ANSI/UL 1322—Fabricated Scaffold Planks and Stages
UL 1323—Scaffold Hoists
ANSI/UL 1332—Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment
ANSI/UL 1409—Low-Voltage Video Products Without Cathode- Ray-Tube Displays
ANSI/UL 1410—Television Receivers and High-Voltage Video Products
ANSI/UL 1411—Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1412—Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
ANSI/UL 1413—High-Voltage Components for Television-Type Appliances
ANSI/UL 1414—Across-the-Line, Antenna-Coupling, and Line- by-Pass Capacitors for Radio- and Television-Type Appliances
ANSI/UL 1416—Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
ANSI/UL 1417—Special Fuses for Radio- and Television-Type Appliances
ANSI/UL 1418—Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1424—Cables for Power-Limited Fire-Protective-Signaling Circuits
ANSI/UL 1429—Pullout Switches
ANSI/UL 1433—Control Centers for Changing Message Type Electric Signs
ANSI/UL 1436—Outlet Circuit Testers and Similar Indicating Devices
UL 1437—Electrical Analog Instruments, Panelboard Types
ANSI/UL 1438—Household Electric Drip-Type Coffee Makers
ANSI/UL 1441—Coated Electrical Sleeving
ANSI/UL 1445—Electric Water Bed Heaters
ANSI/UL 1446—Systems of Insulating Materials—General
ANSI/UL 1447—Electric Lawn Mowers
ANSI/UL 1448—Electric Hedge Trimmers
UL 1449—Transient Voltage Surge Suppressors
ANSI/UL 1450—Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
ANSI/UL 1453—Electric Booster and Commercial Storage Tank Water Heaters
UL 1459—Telephone Equipment
ANSI/UL 1474—Adjustable Drop Nipples for Sprinkler Systems
ANSI/UL 1480—Speakers for Fire Protective Signaling Systems
ANSI/UL 1481—Power Supplies for Fire Protective Signaling Systems
ANSI/UL 1484—Residential Gas Detectors
UL 1486—Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492—Audio and Video Equipment
ANSI/UL 1555—Electric Coin-Operated Clothes-Washing Equipment
ANSI/UL 1556—Electric Coin-Operated Clothes-Drying Equipment
ANSI/UL 1557—Electrically Isolated Semiconductor Devices
UL 1558—Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear

ANSI/UL 1559—Insect-Control Equipment, Electrocution Type
ANSI/UL 1561—Large General Purpose Transformers
UL 1562—Transformers, Distribution, Dry Type—Over 600 Volts
ANSI/UL 1563—Electric Hot Tubs, Spas, and Associated Equipment
ANSI/UL 1564—Industrial Battery Chargers
ANSI/UL 1565—Wire Positioning Devices
UL 1567—Receptacles and Switches Intended for Use With Aluminum Wire
ANSI/UL 1569—Metal-Clad Cables
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1572—High Intensity Discharge Lighting Fixtures
ANSI/UL 1573—Stage and Studio Lighting Units
ANSI/UL 1574—Track Lighting Systems
ANSI/UL 1577—Optical Isolators
ANSI/UL 1585—Class 2 and Class 3 Transformers
UL 1594—Sewing and Cutting Machines
UL 1604—Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
ANSI/UL 1610—Central-Station Burglar-Alarm Units
ANSI/UL 1624—Light Industrial and Fixed Electric Tools
ANSI/UL 1635—Digital Burglar Alarm Communicator System Units
ANSI/UL 1638—Visual Signaling Appliances
ANSI/UL 1647—Motor-Operated Massage and Exercise Machines
UL 1660—Liquid-Tight Flexible Nonmetallic Conduit
ANSI/UL 1662—Electric Chain Saws
ANSI/UL 1664—Immersion-Detection Circuit-Interrupters
ANSI/UL 1666—Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673—Electric Space Heating Cables
UL 1676—Discharge Path Resistors
ANSI/UL 1703—Flat Plate Photo Voltaic Modules and Panels
ANSI/UL 1711—Amplifiers for Fire Protective Signaling Systems
ANSI/UL 1726—Automatic Drain Valves for Standpipe Systems
ANSI/UL 1727—Commercial Electric Personal Grooming Appliances
UL 1738—Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
ANSI/UL 1739—Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1767—Early-Suppression Fast-Response Sprinklers
ANSI/UL 1769—Cylinder Valves
ANSI/UL 1773—Termination Boxes
UL 1776—High-Pressure Cleaning Machines
UL 1778—Uninterruptible Power Supply Equipment
ANSI/UL 1786—Nightlights
UL 1795—Hydromassage Bathtubs
UL 1812—Ducted Heat Recovery Ventilators
UL 1815—Nonducted Heat Recovery Ventilators
UL 1863—Communication Circuit Accessories
ANSI/UL 1876—Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1917—Solid-State Fan Speed Controls
UL 1950—Information Technology Equipment Including Electrical Business Equipment
UL 1995—Heating and Cooling Equipment
UL 2006—Halon 1211 Recovery/Recharge Equipment
UL 2097—Reference Standard for Double Insulation Systems for Use in Electronic Equipment

Underwriters Laboratories, Inc. must also abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

The Occupational Safety and Health Administration shall be allowed access to UL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL shall inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, including details;

UL will continue to meet the requirements for recognition in all areas where it has been recognized; and

UL will always cooperate with OSHA to assure with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

Effective Date: This recognition will become effective on June 29, 1995, and will be valid for a period of five years from that date, until June 29, 2000, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC, this 26th day of June, 1995.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 95–16062 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–26–P

Pension and Welfare Benefits Administration

[Application No. D–09582, et al.]

Proposed Exemptions; Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York and Affiliated Agencies and Institutions (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Retirement Plan for Employees of United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. and Affiliated Agencies and Institutions (the Plan) Located in New York, New York

[Application No. D–09582]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply effective May 29, 1990, to the past purchase and sale of certain securities (the Securities) on May 29, 1990, between the Plan and the endowment fund (the Fund) of the United Jewish Appeal-Federation of Jewish Philanthropies of New York, Inc. (the Federation), a sponsor of the Plan and a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as determined by the closing prices on May 25, 1990, on the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX);

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware Investment Advisors (Delaware) to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX, and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

EFFECTIVE DATE: If granted this exemption will be effective as of May 29, 1990.

Summary of Facts and Representations

1. The Plan is a defined benefit multiple employer plan. As of September 30, 1993, the Plan had $76,919,425 million in net assets, and as of October 1, 1994, the Plan had approximately 5634 participants. Chemical Bank (formerly Manufacturers Hanover Trust Company) is the Plan's trustee.

2. The Federation is a not-for-profit corporation which is exempt from federal tax under section 501(c)(3) of the Code. The Federation is a private, local voluntary human service organization. The Fund is a special general asset account of the Federation.[1]

3. The investment committee (the Investment Committee) of the Federation appoints investment managers to manage the Fund's and the Plan's assets. The members of the Investment Committee are appointed by the Board of Directors of the Federation. Delaware Investment Advisors (Delaware), a division of Delaware Management Company Inc., served as an investment manager for the Fund from 1983 through January of 1993, and managed the Fund's assets of approximately $30 million. Fiduciary Trust Co. was the custodian for this account.

4. The applicant represents that early in 1990, the Investment Committee decided that it wanted to hire Delaware to replace another investment manager, Delphi Management (Delphi), with respect to the management of approximately $10 million of the Plan's assets. At that time, the Investment Committee also determined that the total amount of the Federation related assets, including the assets of the Plan and the Fund, managed by any one investment manager should be limited. This would limit the risk to the portfolios of the Fund and the Plan and further protect the Federation, which as the Plan sponsor was ultimately responsible for any losses to the Plan. Because Delaware was already managing a desired maximum level of the Fund's assets, it was determined that one half of this desired maximum should be managed by Delaware for the Plan and one half managed by Delaware for the Fund. Fees charged by Delaware for its investment management services consisted of an annual charge (billed in quarterly installments) based upon the amount of assets under management.

5. In April of 1990, James L. Rothkopf (Mr. Rothkopf), the chief financial officer of the Federation, informed Delaware that the Investment Committee wanted a portion of the Plan's assets at that time managed by Delphi, to be invested with Delaware. Mr. Rothkopf also indicated that to keep the total Federation related assets under Delaware management at the same level, the Fund investment with Delaware would be reduced to one-half the previous level and that one-half of the Fund's investments would be transferred pro-rata to the Plan portfolio. Delaware indicated to the Investment Committee that it wanted the Plan's portfolio to be virtually identical to the Fund's portfolio.

6. The purchase of Securities by the Plan from the Fund took place on May 29, 1990, at the direction of the Assistant Comptroller of the Federation. In order to accomplish the prescribed allocation, and to avoid the Plan paying any commissions on the acquisition of the Securities, approximately fifty percent (50%) of the amount of each Security held in the Fund portfolio was transferred from Fiduciary Trust Co., custodian for the Fund, into the Plan account at Manufacturers Hanover Trust Company, the custodian of the Plan's assets, and cash representing the fair market value of these Securities ($10,577,756.77) was transferred to a portion of the Fund asset portfolio not

[1] The Federation's consolidated assets are composed of amounts received from donor-created endowments and funds designated by the Federation's Board of Directors to provide for the Federation's long-term needs.

managed by Delaware. All the Securities involved in the transaction were securities of companies listed on the NYSE, with the exception of one Security listed on the AMEX. The fair market value of the Securities was determined by using the exchanges' closing prices on Friday, May 25, 1990. It is represented that the Plan did not pay any fees related to the subject transaction.

7. The applicant represents that the actual transfer of the Securities took place on Tuesday, May 29, 1990, because the prior business day Monday, May 28 was a legal holiday and therefore, there was no trading. The applicant represents that the closing price of the Securities on Friday, May 25, 1990, was effectively equal to the opening price of the Securities on Tuesday, May 29, 1990. Upon completion of the transaction, the Plan held legal title to the Securities acquired from the Fund. It is represented that at the time of the transfer, approximately 17% of the Plan's assets were involved in the transaction.

8. Delaware represents that the Federation consummated the transaction upon facilitation by Delaware and approved the transfer of the Securities from the Fund to the Plan. In an affidavit submitted to the Department, Mr. Rothkopf of the Federation stated that Mr. Marion Dixon, a former money manager with Delaware who was responsible for the Fund portfolio and subsequently for the Plan portfolio, advised him that the initial Plan portfolio should represent 50 percent (50%) of the existing Fund portfolio. This would enable the Fund and the Plan to have identical investment portfolios, thereby achieving the portfolio structures desired by Mr. Dixon, and would also save brokerage commissions. Delaware represents that Mr. Dixon agreed that the initial portfolio for the Plan should contain substantially the same securities as were in the Fund portfolio at that time. Delaware represents that they were of the opinion then, as well as now, that the transfer transaction was in the best interest and protective of the Plan.

9. The applicant states that between June 1990 and January 1993, Delaware sold all the Securities purchased by the Plan in the transaction subject to this exemption request. The determination of gains and losses on the sale of the Securities by the Plan was calculated on a ''first in first out'' basis. The total difference between the aggregate purchase price of the Securities by the Plan and the aggregate sale price of the Securities by the Plan, was an aggregate loss of $513,009.39. The applicant maintains that the Plan portfolio was a managed portfolio with transactions not necessarily based on individual stock profit or loss positions, but based on the portfolio's desired position. As such, stock was sold for a number of reasons, including availability of stock with a better return potential or less downside risk, diversity, cyclical markets, and a variety of other factors. In this regard, stocks were often sold prior to a profit realization because preferable alternative investments were available or concentrations of stock needed to be changed. However, the applicant represents that the Federation is now prepared to contribute to the Plan an amount equal to $513,009.39 over a three plan year period (the Contribution), in order to make up for the loss to the Plan. The Contribution will be made at the same time that the last installment of each annual contribution is made to the Plan for the applicable plan year.

10. The applicant represents that subsequent to the transaction, both the Plan and the Federation were audited by a ''Big Six'' accounting firm, and the transaction was not identified by the auditors as being prohibited during either audit. In the summer of 1993, counsel for the Federation contacted the law firm of Proskauer Rose Goetz & Mendelson [2] (PRG&M) to discuss the Fund's and the Plan's claims in a class action settlement against the issuer of one of the Securities involved in the subject transaction. When the facts of the transaction surfaced in the discussion, it was questioned whether a prohibited transaction had occurred as a result of the Plan's purchase of the Securities from the Fund. PRG&M then commenced an investigation of the facts surrounding the transaction and the ERISA provisions involved. The applicant then filed an exemption request in this matter.

11. The applicant has requested retroactive relief for the transaction which occurred on May 29, 1990, noting, among other things that: (1) The transaction was a one-time transfer of the Securities for cash; (2) the transaction was in the interest and protective of the Plan because the Plan was able to acquire the Securities at fair market value and not pay any commissions; and (3) the Securities represented a well-diversified portfolio of stock of recognized companies.

12. In summary, the applicant represents that the transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The transfer of the Securities was a one-time cash transaction;

(b) The transaction was at fair market value as evidenced by the closing prices on May 25, 1990 on the NYSE and the AMEX;

(c) The Plan paid no commissions with respect to the transaction;

(d) The Federation determined upon consultation with Delaware to engage in the transaction;

(e) The Securities transferred from the Fund to the Plan were all listed on either the NYSE or AMEX and constituted exactly a 50% pro rata share of all the securities then owned by the Fund; and

(f) Over a three plan year period, the Federation will contribute $513,009.39 to the Plan to make up the loss sustained by the Plan when the Securities were sold out of the Plan portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Motors Hourly-Rate Employes Pension Plan, General Motors Retirement Program for Salaried Employees (the Salaried Plan), Saturn Individual Retirement Plan for Represented Team Members, Saturn Personal Choices Retirement Plan for Non-Represented Team Members, and Employees' Retirement Plan for GMAC Mortgage Corporation (collectively, the Plans) Located in New York, New York

[Application Nos. D–09859 through D–09863]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 9, 1994, to the acquisition by the Plans of limited partnership interests (the Interests) in APA Excelsior III, L.P. from Metropolitan Life Insurance Company (Metropolitan), a party in interest with respect to the Plans; provided that the following conditions are satisfied:

(A) All terms and conditions of the transaction were at least as favorable to the Plans as those which the Plans

[2] This law firm was not counsel to the Federation nor the Plan at the time of the transaction.

could obtain in an arm's-length transaction with an unrelated party;

(B) Metropolitan is not, and has not been, a fiduciary with respect to any assets of the Plans involved in the transaction;

(C) The transaction was a one-time transaction for cash in which the purchase price did not exceed the fair market value of the Interests;

(D) The methodology for determining the fair market value of the Interests was in accordance with standards maintained by professional venture capital valuation specialists for the valuation of limited partnership interests in venture capital partnerships; and

(E) Metropolitan did not participate in the Plans' determination of the fair market value of the Interests.

EFFECTIVE DATE: This exemption, if granted, will be effective as of April 9, 1994.

Summary of Facts and Representations

Introduction: In April 1994, the Plans acquired limited partnership interests (the Interests) in A.P. Excelsior III, Limited Partnership (the Partnership) from Metropolitan Life Insurance Company (Metropolitan). This transaction occurred without a determination having been made that Metropolitan was a party in interest with respect to the Plans. Subsequently, the parties discovered that the entity from which the Plan acquired the Interests, Metropolitan, is a service-provider party in interest with respect to certain of the Plans, and an exemption is now requested for the Plans' past acquisition of the Interests from Metropolitan, under the terms and conditions described herein.

1. The Plans are defined benefit and defined contribution employee benefit plans maintained by General Motors Corporation and its affiliates (GM), with approximately 831,530 participants as of October 1, 1994. The approximate fair market value of the total assets of the Plans as of May 31, 1994 was $41 billion. The assets of the Plans are maintained in two trusts (the Plans' Trusts): The General Motors Salaried Employees Pension Trust, which holds the assets of the Salaried Plan, and the General Motors Hourly-Rate Employees Pension Trust, which holds the assets of the other four Plans. The named fiduciary with respect to each Plan is the Finance Committee of the board of directors of GM (the Finance Committee).

2. The Finance Committee has delegated certain fiduciary responsibilities to the Pension Investment Committee (the PIC), including the responsibility for allocating funds among asset classes in accordance with broad investment guidelines established by the Finance Committee and overseeing in-house investing for a portion of the assets of the trusts which fund the Plans. The PIC is comprised of executive officers of GM. The PIC carries out its investment oversight responsibility through the General Motors Investment Management Corporation (GMIMCO), a registered investment adviser under the Investment Advisers Act of 1940, as amended. Certain members of the PIC serve on the board of directors of GMIMCO. The Finance Committee reviews the actions of the PIC and GMIMCO on a periodic basis to evaluate performance and to assure that the Finance Committee's delegation of authority continues to be prudent.

3. GMIMCO is involved in all aspects of the management of the Plans' assets, and its functions with respect to the Plans' involvement in private market transactions are executed by its private market investments staff (PMI Staff). The PMI Staff consists of twelve professionals (the PMI Staff) who research, document and negotiate private market transactions on behalf of the Plans, with the assistance of GMIMCO's legal staff. Under current procedures, all private market transactions subject to final approval by GM's in-house investment management function are directed to the PMI Staff for review, analysis and, if needed development. After an investment has been reviewed, analyzed and favorably approved by the PMI Staff, the additional levels of approval required for authorization of the investment depends upon the amount of the investment. Final approval authority for private market transactions rests with the PIC, for investments of amounts of $75 million and under, and the Finance Committee, for investments of amounts over $75 million. The PIC's final approval authority for the investment of amounts of $30 million or less is exercised by a special PIC subgroup, the Private Investment Review Team (the PIRT).

4. The current assets of the Plans under the authority of the PIC include the Plans' Trusts' interests in the First Plaza Group Trust (First Plaza). First Plaza, which invests solely in private market investments, is a group trust maintained by GM on behalf of the Plans' Trusts, each of which owns approximately 50 percent. The trustee of First Plaza is Mellon Bank, N.A. (Mellon Bank). On April 19, 1994, pursuant to the direction of the PIC and GMIMCO, First Plaza invested $2,465,784 in the APA Excelsior III, L.P. (the Partnership) by purchasing limited partnership interests (the Interests) from Metropolitan Life Insurance Company (Metropolitan). The Interests purchased by the Plan represent 4.2 percent of the Partnership's total limited partnership interests. The Partnership is a venture capital operating company, the purpose of which is to generate long-term capital appreciation by acquiring a broad portfolio of equity-oriented investment positions in quoted and nonquoted companies in a variety of industries in the United States. As a result of such purchase, First Plaza succeeded to the obligation to make additional capital contributions of $1,150,000 to the Partnership. GM represents that the Interests represent a total capital contributions commitment of $5 million to the Partnership, $3,850,000 of which had been paid by Metropolitan prior to First Plaza's purchase of the Interests. GM states that the difference between the $2,465,784 paid for the Interests by First Plaza and the $3,850,000 invested in the Interests by Metropolitan represents (a) distributions Metropolitan had already received from the Partnership, and (b) a discount negotiated by GMIMCO on behalf of First Plaza. GM represents that in June 1994, the PIC and GMIMCO and Metropolitan became aware that the transaction was a prohibited transaction under the Act, due to the fact that Metropolitan is a service-provider party in interest with respect to the Plans. The PIC and GMIMCO are requesting an exemption for the Plans' past purchase of the Interests from Metropolitan, effective April 9, 1994, under the terms and conditions described herein.

5. Metropolitan is a mutual life insurance company organized under the laws of the state of New York, with total assets under management of approximately $163.4 billion as of December 31, 1993. Metropolitan represents that it offers a wide variety of insurance products, asset management and administrative services for thousands of employee benefit plans subject to the Act. GM and Metropolitan represent that Metropolitan is totally independent from GM, except as provider to the Plans of services which are not involved in the subject transaction. GM represents that Metropolitan's services to the Plans are described as follows:

(a) In 1940, the General Motors Retirement Program for Salaried Employee's was funded by a deferred group annuity contract under which annuities were purchased from Metropolitan and other insurance companies. Effective January 1, 1977,

the funding under the deferred group annuity was changed to a deposit administration contract with immediate participation guarantee. It remains in effect but no additional funds have been deposited in the contract since 1985.

(b) Metropolitan coordinates the transfer of all insured after-tax employee contributions to the Plans' trustee for distribution upon a Plan participant's retirement.

(c) Since 1988, Metropolitan has served as recordkeeper under the Saturn Individual Retirement Plan for Represented Team Members and, upon request, provides annuities with respect to employee contributions under the Saturn Personal Choices Retirement Plan for Non-Represented Team Members.

GM represents that neither Metropolitan nor any of its affiliates is a fiduciary with respect to any of the Plans' assets which were used to purchase the Interests or any assets to be used to pay the remaining capital contributions with respect to the Interests. Metropolitan represents that it maintains procedures for determining whether a proposed transaction is prohibited under the Act, and that such procedures were inadvertently not utilized in advance of the subject transaction.

6. GM and Metropolitan represent that the transaction was negotiated at arm's length and in good faith upon the mistaken assumption that Metropolitan was not a party in interest with respect to the Plans, and, accordingly, that the parties were unaware that the transaction with First Plaza was prohibited under section 406(a) of the Act. GM represents that the PIC and GMIMCO maintain comprehensive and up-to-date lists of parties in interest with respect to the Plans in order to guard against inadvertent party in interest transactions, and that Metropolitan was reflected in such lists due to its holding and investment of employee after-tax contributions under the Plans under both separate account and general account arrangements. GM maintains that, as with all investments directed by the PIC and GMIMCO, the normal due diligence procedures were followed. GM notes that the investment contracts with Metropolitan were entered into almost 50 years ago and are not administered by the PMI Staff, which effected the purchase of the Interests from Metropolitan. As a result, Metropolitan was not recognized by the PMI Staff as a party in interest, and the PMI staff did not refer to the party in interest list in advance of the transaction. GM also notes that the current party in interest list indicates 1,375 entities which are parties in interest with respect to the Plans. GM represents that the staffs and attorneys of the PIC and GMIMCO and the PIRT each believed that another responsible party had reviewed the party in interest list as the transaction proceeded.

7. GM represents that the potential purchase of the Interests by First Plaza was an opportunity which was brought to the PMI Staff by the general partner of the Partnership, and not by Metropolitan. GM states that this recommendation was subject to the same thorough investigation and analysis by the PMI Staff as any other private market transaction proposed for the Plans. GM represents that all aspects of the investment analysis, the determination and negotiation of the purchase, and the continued monitoring of the investment have proceeded strictly in accordance with the procedures which the PIC and GMIMCO maintain to ensure that such investments meet the Plans' investment criteria and do not subject the Plans to any unnecessary risk.

8. *Valuation of the Interests:* GM represents that the purchase price paid for the Interests was not in excess of the fair market value of the Interests as of the sale date, as determined by GMIMCO's PMI Staff contemporaneously with the transaction. In this regard, GM represents that the PMI Staff utilized the valuation methodology utilized by GMIMCO in any transaction requiring the calculation of the fair market value of interests in a venture capital fund. GM describes the method of determining the fair market value of the Interests as follows:

The PMI Staff requested and received from the general partner of the Partnership (the General Partner) the most recent statement of the value of Metropolitan's capital account in the Partnership. The PMI Staff adjusted this value by adding all drawdowns to the Partnership by Metropolitan, and subtracting all distributions from the Partnership to Metropolitan, since the date of the statement. Each public company in the Partnership's portfolio was valued using the latest available public market value, and then an appropriate liquidity discount was taken. The specific discount rate applied to each such portfolio company depended on how soon it was then anticipated that its security would be distributed from the Partnership to the limited partners.

The PMI Staff requested and received information from the General Partner regarding the private (i.e. non-publicly-traded) investments in the Partnership. Using this information and other information which the PMI Staff was able to obtain from other sources, the private investments in the Partnership's portfolio were valued by the PMI Staff. In valuing each such company, the PMI Staff elected to use conservative standards and, in fact, valued some companies at zero, not because that was the actual value, but because there was not enough information available at that time to make a reasonable determination of fair market value. GM represents that such ''zero valuation'' is standard practice of financial analysis in the venture capital industry.

With respect to the Partnership's holdings of interests in publicly-traded companies and those non-public companies for which significant financial performance information was available, the PMI Staff projected what each company would be worth in the future and then discounted that amount back to the present using an appropriate discount rate. The future projections were based on the PMI Staff's knowledge of each particular company, including projected cash flow of the company, probability of when and if the company would be going public, the company's business plan, the anticipated timing of distribution of a company's securities after the company has gone public or the sale proceeds from the sale of the company to a third party, and information regarding the General Partner.

After determining the discounted values of the portfolio companies and the adjusted book value of the Partnership's limited partnership interests, the PMI Staff entered into negotiations with Metropolitan which resulted in a purchase price which was not more than the PMI Staff's determination of the fair market value of the Interests.

9. GM represents that the process and methodology utilized by the PMI Staff, described above, reflects the venture capital industry standards for evaluation. Specifically, GM states that GMIMCO developed this methodology in consultations with two widely-known sponsors of venture capital funds, Brinson Partners, Inc. (Brinson) and Chancellor Capital Management, Inc., each of which uses the same methodology when purchasing limited partnership interests in the secondary market. Brinson, a registered investment adviser which maintains a fund investing solely in limited partnership interests sold on the secondary market, has reviewed and evaluated the methodology utilized by the PMI Staff in determining the fair market value of the Interests for purposes of First Plaza's

purchase of the Interests from Metropolitan. Brinson represents that the methodology used by the PMI Staff was appropriate and reasonable, and that this conclusion is based on Brinson's experience as a seasoned long-term venture capital and secondary partnership investor. GM represents that at no time was Metropolitan a part of the process by which the PMI Staff determined the fair market value of the Interests.

10. In summary, the applicants represent that the criteria of section 408(a) of the Act are satisfied in the subject transaction for the following reasons: (1) The transaction was a one-time transaction for cash; (2) Metropolitan was not and is not a fiduciary with respect to any assets involved in the transaction; (3) The purchase price did not exceed the Interests' fair market value, as determined by the PMI Staff; (4) The fair market value of the Interests was determined by the PMI Staff according to GMIMCO's standard procedures for valuation of interests in venture capital funds; and (5) Brinson determined that the methodology utilized by the PMI Staff in determining the Interests' fair market value was appropriate and reasonable.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

First and Farmers Bank of Somerset, Inc. (the Bank) Located in Somerset, Kentucky

[Application Numbers D–09921 through D–09926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, as of April 25, 1995, to the cash sale of certain collateralized mortgage obligations (CMOs) held by six employee benefit plans for which the Bank acts as trustee (the Plans) to the Bank, a party in interest with respect to the Plans.

This proposed exemption is subject to the following conditions: (1) Each sale was a one-time transaction for cash; (2) Each Plan received an amount that was equal to the greater of: (a) the outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of the sale; or (c) the fair market value of each CMO owned by the Plans as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank at the time of the sale; (3) The Plans did not pay any commissions or other expenses with respect to the sale; (4) The Bank, as trustee of the Plans, determined that the sale of the CMOs is in the best interests of each of the Plans and their participants and beneficiaries at the time of the transaction; (5) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the transactions; and (6) Each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs.

EFFECTIVE DATE: If granted, this proposed exemption would be effective April 25, 1995.

Summary of Facts and Representations

1. The Bank is a Kentucky chartered commercial bank that was organized in November of 1870. First and Farmers Bancshares, Inc., a one-bank holding company incorporated in Kentucky in 1983, owns 80.43 percent of the Bank. The Bank offers the traditional services of a community bank (e.g., checking, savings, loans and trusts) to both individuals and entities in the Somerset area. The Bank serves as trustee of the Plans and has investment discretion with respect to the assets of the Plans.

The Plans are the Adams and Adams Keogh Retirement Plan (the Adams Plan); the Lake Cumberland Home Health Agency Employee Retirement Plan (the Lake Plan); the Bank of Cumberland Money Purchase Pension Plan (the Cumberland Plan); the Childrens Clinic Money Purchase Pension Plan (the Clinic Plan); the Ruckels Farm Supply Defined Contribution Plan (the Ruckels Plan); and the First and Farmers Bank Employee Retirement Plan (the Bank Plan). All of the Plans are defined contribution plans except the Bank Plan, which is a defined benefit plan.

As of December 30, 1994, the Adams Plan had seven participants and total assets of $377,074; the Lake Plan had 271 participants and total assets of $939,926; the Cumberland Plan had twenty-one participants and total assets of $520,996; the Clinic Plan had fifteen participants and total assets of $593,925; the Ruckels Plan had ten participants and total assets of $147,207; and the Bank Plan had 124 participants and total assets of $662,513. Thus, as of December 30, 1994, the Plans had 448 participants and total assets of approximately $3,241,641.

2. The Bank represents that at various times during September, November and December of 1993, assets of the Plans were invested in the CMOs, which were purchased from broker-dealers that were independent of the Plans as well as the Bank and its affiliates. The CMOs are investment products through which investors purchase mortgage-backed securities that represent interests in a pool of residential mortgage loans. In general, investors receive payments of principal and interest or, in some cases, either principal or interest only, depending upon the type of security purchased. Interest payments change monthly in relation to a specific index, such as the London Interbank Offered Rate (LIBOR), contained in a formula used to calculate the interest rate for such securities. Principal payments vary in amount and timing depending upon how quickly the various mortgage-backed securities prepay due to the prepayment speed of the mortgages in the mortgage pools. The repayment of principal and interest is usually guaranteed by various U.S. Government Agencies, such as the Federal National Mortgage Association (FNMA or ''Fannie Mae'').

3. The CMOs are described as follows: (a) CUSIP 31358JAU5, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E; (b) CUSIP 31358NCV2, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class E; (c) CUSIP 31359GDX1, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SM; (d) CUSIP 31359GDTO, FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Class SO.[3]

[3] The applicant states further that if a plan acquires a ''guaranteed governmental mortgage pool certificate'', the plan's assets include the certificate but not any of the mortgages underlying such certificate (see 29 CFR 2510.3–101(i)). A ''guaranteed governmental mortgage pool certificate'' is a certificate (i) that is backed by, or evidences an interest in, specified mortgages or participation interests, and (ii) whose interest and principal payments are guaranteed by the Government National Mortgage Association (GNMA), the Federal Home Loan Mortgage Corporation (FHLMC or ''Freddie Mac''), or FNMA. Thus, the applicant represents that since all of the CMOs have interest and principal payments payable under the CMOs guaranteed by FNMA, the

All of the CMOs mentioned above are structured as a real estate mortgage investment conduits (''REMIC'') under section 860D of the Code. The various classes of certificates receive principal and, possibly, interest payments in differing portions and at differing times from the cash flows provided from the monthly payments received on the underlying mortgages.

The repayment of principal from the underlying mortgages fluctuates significantly. To facilitate the structuring of such REMICs, the prepayments on the pools of mortgages are commonly measured relative to a variety of prepayment models. The model used for these REMICs is the Public Securities Association's standard prepayment model or ''PSA''. This model assumes that mortgages will prepay at an annual rate of .2 percent in the first month after origination, then the prepayment rate increases at an annual rate of .2 percent per month up to the 30th month after origination and then the prepayment rate is constant at 6 percent per annum in the 30th and later months. This assumption is called 100 PSA.

The REMIC structure allocates principal payments to the various classes or ''tranches'' in varying amounts as principal payments are made accordingly to the allocations specified in the prospectuses. The exact date of repayment of all principal to any REMIC class is not known until the mortgage-backed securities are paid in full. The maturity for the various classes is referred to as the ''weighted average life'' (WAL). The WAL of a class refers to the average amount of time, expressed in years, which will elapse from the date of its issuance until each dollar of principal has been repaid to the investor based on the PSA assumption. The holders of all classes will receive all of their principal back. However, the timing of when that principal is returned is dependent on how quickly the underlying mortgages are repaid or refinanced. In no event will the time for the recovery of principal exceed the final maturity date of the underlying mortgages.

Each month the monthly payments on the underlying mortgages are collected and distributed to the holders of the various REMIC classes. Depending upon the structure of the REMIC, interest may be paid monthly according to a specific formula. The CMOs owned by the Plans, described in further detail below, are either ''principal only'' or ''inverse floaters'' indexed to one month LIBOR.

Principal only bonds are similar to Series E savings bonds in that the investor purchases the bond at a discount and receives the principal cash flow off the collateral. The difference in the principal amount invested and the face value equates to the investment's yield. The timing of the cash flows received determines the ultimate yield on the investment. With a principal only bond, the faster the collateral pays down, the higher the yield the investor receives. Income is recognized by accreting the discount over the expected life of the security; however, there are no regular interest payments received on principal only bonds. There is no loss of principal because the investor will ultimately receive face value. However, because there is no guarantee as to the timing of the cash flows, the bond's ultimate yield is unknown.

The remaining CMOs are ''inverse floaters'' so described, because the formulas used to calculate the interest payments, which adjust monthly for each certificate, usually raise the rate when the index falls and lower the rate when the index rises. ''LIBOR'' refers to the arithmetic mean of the London Interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship with the interest paid on all inverse floating rate classes.

The Bank, as trustee of the Plans, purchased all of the CMOs from Andrew F. Cashiola of Government Securities Corporation of Texas, located in Houston, Texas, and Randy Stevens of Hart Securities, Inc., located in Houston, Texas. The Bank states that neither the brokers (i.e. Mr. Cashiola or Mr. Stevens) nor their brokerage firms have any relationship to the Plans, the employers that maintain the Plans, the Bank or any of its affiliates.

A description of each CMOs, including the respective interest rate formulas, WAL and PSA assumptions are set forth below in the Appendix.

4. At the time of the purchase of the CMOs by the Bank, as trustee of the Plans, the Bank anticipated that each CMO would be retired within one to three years of the date of purchase due to prepayments of the underlying mortgages in each pool as obligors refinanced their mortgages at lower interest rates. Because of recent increases in interest rates, the market value of the CMOs had decreased significantly. On April 25, 1995, the Bank obtained bids to determine the fair market value of each CMO held by the Plans on the date of sale from three different independent broker-dealers—PNC Securities in Louisville, Kentucky; Commerce Union Investments in Memphis, Tennessee; and First Tennessee Corporation in Memphis, Tennessee (the Broker-Dealers). The Bank states that as of the date of the sale, the Broker-Dealers were not related to, or associated with, the Bank or the Plans. The Broker-Dealers provided the following bids as of April 25, 1995:[4]

CUSIP No.	PNC Securities	Commerce Union	First Tennessee	Average bid
31358JAU5	35.00	37.00	46.50	39.50
31358NCV2	42.00	37.00	39.50	39.50
31359GDT0	29.00	29.75	27.25	28.67
31359GDX1	14.00	20.00	24.50	19.50

Based on the pricing information obtained from the Broker-Dealers, the Bank represents that the fair market value of the CMOs was significantly below the original purchase price of the CMOs (as noted in the first table below in Representation #7). The expectation of additional interest rate increases in the near future caused the Bank to believe that the CMOs would not appreciate in the near term. As a result of these changing market conditions, the Bank anticipated that the CMOs will not be retired for fifteen to twenty years due to the slowing of the prepayment speed because of the recent increases in the

assets of the Plans do not include any of the mortgages underlying such CMOs.

[4] The Broker-Dealers' bids shown in the table represent a price quoted per $100 of principal. To determine the fair market value for each CMO based on the average bid quoted, the par value of the CMO would be multiplied by the particular quote, expressed as a percentage of 100. For example, if the par value of the CMO was $10,000 and the average bid for the CMO on April 25, 1995 was $39.50 per $100 of principal, the quoted price would have been $3950 since $10,000 × .3950 = $3950.

interest rates.[5]

5. Under the terms of the Plans and the applicable law, a Plan participant who retires or terminates employment is eligible to receive a distribution of the value of his or her account in the Plan, sometime immediately following retirement or termination. For purposes of this distribution, the value of the participant's account is the value of the account as of the Plan's last valuation date. If the Plans continued to hold the CMOs, the value of each participant's account, as of the valuation date, would reflect the recent decreases in fair market value of the CMOs. In order to mitigate such potential losses, the Bank purchased the CMOs on April 25, 1995 from the Plans at an amount, which in each case was equal to the greater of: (a) The outstanding principal balance for each CMO owned by the Plans, plus accrued but unpaid interest, at the time of the sale, (b) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (c) the fair market value of each CMO owned by the Plans on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank.

6. The Bank calculated the value of the CMOs held by the Plans, as of April 25, 1995, using an amortized cost computation. The Bank states that the computation of the amortized cost was arrived at by a series of computations. First, the Bank determined the amount of the discount paid upon purchase (Purchase price—100 = Discount). The par value or face value of each CMO was 100. The Bank states that any discount must be allocated monthly in order to be properly matched to the principal payments to be received over the life of the investment. Also, any discount must be allocated monthly in order to properly account for the income to be earned over the life of the investment. The number of months to which the Bank allocated each discount was determined by the WAL for each CMO at the time of purchase (expressed in years) multiplied by twelve (WAL × 12 = amortizing months).[6] Then, the Bank determined the amount of each discount to be allocated to each month by dividing each discount by the number of amortizing months. The Bank determined the number of months remaining in the life of each CMO by subtracting from the number of amortizing months the number of months that the Plan actually held each CMO. The Bank states that the remaining months were then multiplied by each monthly discount amount to arrive at the discount balance for each CMO. The discount balance was added to the par value for each CMO (i.e., 100) to arrive at the amortized cost remaining for each CMO. Thus, the Bank states that the formula it used for calculating amortized cost was as follows:[7]

7. The Bank also calculated the remaining principal balance, plus accrued but unpaid interest, on the CMO investments held by each Plan as of April 25, 1995, based on the original cost of the securities and the principal and interest payments received by the Plans through that date. As shown on the table below, the Bank represents that, as of April 25, 1995, all of the Plans would have received more than the remaining principal balances (plus accrued but unpaid interest) on their CMO investments by using the Bank's amortized cost computation for the CMOs. In addition, the table below shows the fair market values of the CMOs held by each Plan, based on the Bank's solicitation of bids from the Broker-Dealers.

Plan	Amort. cost	Prin. bal.	Mkt. value
Adams Plan	$62,321	$53,845	$19,650
Lake Plan	259,723	225,534	80,643
Cumberland Plan	132,126	111,662	34,889
Clinic Plan	139,288	116,543	30,108
Ruckels Plan	14,466	11,698	2,925
Bank Plan	243,234	210,076	72,895

The Bank also determined that, as of April 25, 1995, a sales price for the CMOs held by each Plan based on amortized cost, plus the total principal and interest payments received by the Plans through the date of sale, produced a total return to the Plans that exceeded the Plans' total original cost for the CMOs.

[5] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding of the CMOs by the Plans violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act.

The Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

In this regard, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a-1). The Department also notes that in order to act prudently in making such investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than comparable investments offering a similar return or result.

[6] As noted previously in Representation #3, the WAL for a CMO is determined at the time of purchase based on various assumptions about the speed of principal repayments and interest rate changes, using financial data provided by independent sources (such as Bloomberg Financial Markets). The Bank states that changes to the formula for calculating the amortized cost based on WAL assumptions other than at the time of purchase would not provide an administratively acceptable method of allocating the discount for a CMO because such a method would require constant adjustments which are not material to the concept of income recognition as it relates to CMOs.

[7] For example, assume that a particular CMO investment has been held by a Plan for 6 months. If the WAL was 2.02 years and the cost was 90 based on the par value being 100, the formula would be:

$$[[(90–100)/(2.02 \times 12)] \times [(2.02 \times 12) - 6)]] + 100$$
$$= [(-10/24.24) \times (24.24 - 6)] + 100$$
$$= (-.4125413 \times 18.24) + 100$$
$$= -7.5247533 + 100$$
$$= 92.475247$$

As the formula indicates, the amortized cost using the average life at purchase would be $92.475247 as compared to the actual cost of $90.00. Therefore, the Bank states that the amortized cost formula will cause the Plan to be paid an amount for this CMO investment which is slightly more than the Plan's original cost (i.e. basis).

Plan	Interest received	Principal received	Amort. cost	Total receipts	Original cost
Adams Plan	$4,080	.....	$62,321	$66,401	$57,925
Lake Plan	18,117	15,689	259,723	293,529	259,273
Cumberland Plan	10,199	18,826	132,126	161,151	140,688
Clinic Plan	12,376	.....	139,288	151,664	128,884
Ruckels Plan	1,531	.....	14,466	15,997	13,228
Bank Plan	17,513	20,395	243,234	281,142	247,927

The Bank represents that each Plan received a reasonable rate of return on the CMOs during the period of time that it held the CMOs. In this regard, the Bank states that the annualized weighted average rate of return received by each Plan on its CMOs, net of the principal investment, was as follows: (i) 14.28% for the Adams Plan; (ii) 13.57% for the Lake Plan; (iii) 16.62% for the Cumberland Plan; (iv) 17.91% for the Clinic Plan; (v) 21.53% for the Ruckels Plan; and (vi) 14.16% for the Bank Plan.[8]

Based on the Bank's determination that the amortized cost method resulted in the greatest sales price as of April 25, 1995, the Bank purchased the CMOs from the Plans on April 25, 1995 at each CMOs' amortized cost for a total of $851,158.

8. The Bank, as trustee of the Plans, states that the sale of the CMOs was in the best interests of the Plans and their participants and beneficiaries. The Bank states that the sale allowed the Plan participants to insulate themselves from further decreases in the fair market value of the CMOs and to mitigate any losses. In addition, the Bank states that the sale of the CMOs shifted the consequences associated with selling the CMOs before their retirement from the Plan participants to the Bank.

9. The Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the sale of the CMOs. The Bank ensures that each Plan received the appropriate amount of cash from the Bank in exchange for such Plan's CMOs on April 25, 1995. The Bank also ensures that the Plans did not pay any commissions or other expenses in connection with the sale of the CMOs to the Bank.

10. In summary, the Bank represents that the sale satisfied the statutory criteria of section 408(a) of the Act and section 4975 of the Code because: (a) Each sale was a one-time transaction for cash; (b) Each Plan received an amount that was equal to the greater of: (i) The outstanding principal balance for each CMO owned by the Plan, plus accrued but unpaid interest, at the time of the sale; (ii) the amortized cost for each CMO owned by the Plans, plus accrued but unpaid interest, as determined by the Bank on the date of sale; or (iii) the fair market value of each CMO owned by the Plan as determined by the Bank on the basis of reasonable inquiry from at least three sources that are broker-dealers or pricing services independent of the Bank; (c) The Plans did not pay any commissions or other expenses with respect to the sale; (d) The Bank, as trustee of the Plans, determined that the sale of the CMOs would be in the best interests of each Plan and its participants and beneficiaries; (e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans and their participants and beneficiaries in connection with the proposed transactions; and (f) Each Plan received a reasonable rate of return on the CMOs during the period of time it held the CMOs.

Notice to Interested Persons

The applicant states that notice of the proposed exemption shall be made by first class mail to the appropriate Plan fiduciaries within fifteen days following the publication of the proposed exemption in the **Federal Register**. This notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and a supplemental statement (see 29 CFR 2570.43(b)(2)) which informs interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Comments and requests for a public hearing are due within forty-five days following the publication of the proposed exemption in the **Federal Register**.

Appendix

A. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1991–110, Class E were issued by Fannie Mae as part of an issue of pass-through certificates with nine various classes in the total amount of $200,010,000. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 300 PSA assumption regarding principal repayment (3 times 100 PSA). The WAL for the E class based on a 300 PSA was 10.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class E was 9.1 percent and May of 2021, respectively.

B. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1992–96, Class B were issued by Fannie Mae as part of an issue of pass-through certificates with six various classes in the total amount of $300 million. The Bank, as trustee of the Plans, purchased portions of one of those classes. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

This REMIC uses a 375 PSA assumption regarding principal repayment (3.75 times 100 PSA). The WAL for the B class based on a 375 PSA was 5.9 years at the time of purchase.

This REMIC is a principal only bond and, therefore, does not bear interest. The initial interest rate and final distribution date for class B was 8.3 percent and May of 2022, respectively.

C. The FNMA Guaranteed REMIC Pass-Through Certificates, Fannie Mae REMIC Trust 1993–225, Classes SM and SO were issued by Fannie Mae as part of an issue of pass-through certificates with 130 various classes in the total amount of $3,102,000,000. The Bank, as trustee of the Plans, purchased a portion of one class. The Certificates are secured by first lien residential mortgages with an original term to maturity of 360 months or less.

[8] The formula for the annualized rate of return for the months held was computed for each CMO as follows: [[((Interest Collected + Accretion Income) / Number of Months Held) × 12] / Total Cost]. The term ''Accretion Income'' represents the accretion of the discount received off of the face value of each CMO allocated to the number of months each CMO was held. To arrive at an annualized weighted average rate of return for each Plan, the annualized rate of return for each CMO was calculated to reflect the return of each CMO held by each Plan. The individual CMOs held by each Plan were ''weighted'' according to the amount invested to compute the total weighted average rate of return for each Plan.

This REMIC uses a 200 PSA assumption regarding principal repayment (2 times 100 PSA). The WAL for class SM and SO based on a 200 PSA was 20.2 years and 9.4 years, respectively, at the time of purchase.

The formula for the interest on class SM is 27.7289% − (LIBOR×4.26589) with a minimum rate of 0.0% and a maximum rate of 27.7289%.[9] For class SO, the interest is 23.1358% − (LIBOR×3.30495) with a minimum rate of 0.0% and a maximum rate of 23.135. As an inverse floater, the movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes. The initial interest rates for the SM and SO classes were 14.92206% and 12.60047, respectively. The final distribution dates for the SM and SO classes were December 2023 and November 2022, respectively. The interest rate for the SM class can drop to 0.0% if LIBOR reaches 6.5% or higher. The interest rate for the SO class can drop to 0.0% if LIBOR reaches 7.0% or higher.

FOR FURTHER INFORMATION CONTACT: Mr. E. F. Williams of the Department, telephone (202) 219–8194. (This is not a toll-free number.)

PaineWebber Incorporated Located in New York, New York

[Application No. D–09953]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, PaineWebber Incorporated and each of its affiliates (collectively, PaineWebber), shall not be precluded from functioning as a ''qualified professional asset manager'' pursuant to Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984) solely because of a failure to satisfy section I(g) of PTCE 84–14, as a result of General Electric Company's ownership interest in PaineWebber, including any current or future affiliate of PaineWebber which is, or in the future may become, eligible to serve as a QPAM under PTCE 84–14; provided the following conditions are satisfied:

(A) This exemption is not applicable to any affiliation by PaineWebber with any person or entity convicted of any of the felonies described in part I(g) of PTCE 84–14, other than G.E; and

(B) This exemption is not applicable with respect to any convictions of G.E. for felonies described in part I(g) of PTCE 84–14 other than those involved in the G.E. Felonies, described below.

Summary of Facts and Representations

Introduction: General Electric Company (G.E.), an approximately 22 percent owner of PaineWebber Group Inc. (P.G.I.), has been convicted during the past ten years of certain felonies relating to G.E.'s government contracts operations prior to its acquisition of interests in P.G.I. Because G.E. acquired ownership interests in P.G.I. during 1994, the felony convictions could bar P.G.I. and its wholly-owned subsidiaries from acting as ''qualified professional asset managers'' (QPAMs) under Prohibited Transaction Class Exemption 84–14 (PTCE 84–14, 49 FR 9494, March 13, 1984). Part I(g) of PTCE 84–14 requires that no person owning, directly or indirectly, 5 percent or more of the QPAM has been convicted of certain felonies within ten years preceding the transaction for which the QPAM intends to utilize PTCE 84–14. PaineWebber Incorporated (PaineWebber), a wholly-owned subsidiary of P.G.I, and two of PaineWebber's wholly-owned subsidiaries (collectively, the Applicants) are requesting an exemption to enable them to qualify as QPAMs without regard to any failure to satisfy part I(g) of PTCE 84–14 by reason of G.E.'s ownership of P.G.I., under the terms and conditions described herein.

1. PaineWebber, a Delaware corporation which is wholly owned by P.G.I., engages in a variety of securities services, with its principal place of business in New York, New York. PaineWebber is registered as a broker-dealer and an investment adviser, maintaining memberships on all principal securities and commodities exchanges in the United States as well as the National Association of Securities Dealers, Inc. PaineWebber represents that it provides investment advisory services relating to a wide variety of securities, including but not limited to the following: Exchange-listed, over-the-counter and foreign securities; rights and warrants; securities options and futures; corporate and governmental debt securities; commodities futures, contracts and options; bankers' acceptances; and mutual fund shares. PaineWebber is joined in requesting the exemption by two of its wholly-owned subsidiaries: (a) Mitchell Hutchins Asset Management Inc. (MHAM), located in New York, is an investment management services provider which has sponsored and offers interests in a number of limited partnerships and offshore funds; and (b) Mitchell Hutchins Institutional Investors Inc. (MHII), located in New York, provides discretionary investment management services and non-discretionary investment advisory services. MHII provides investment advice relating to privately-placed alternative asset investment vehicles, including funds specializing in venture capital, distressed debt, leveraged buyouts and restructurings, and privately-placed securities.

The Applicants represent that the clientele served by the operations of PaineWebber and its subsidiaries, especially MHAM and MHII, include substantial numbers of large employee benefit plans subject to the Act. The applicants maintain that, given the size and number of the plans which the Applicants represent, the large number of financial service providers engaged by such plans, the breadth of the definition of ''party in interest'' under the Act, and the wide array of services offered by the Applicants, it would not be uncommon for an Applicant to propose a transaction involving a party in interest with respect to a plan for which the Applicant is acting in a fiduciary capacity. The Applicants represent that the proposing of such transactions is occasionally necessary to offer plan clients adequate investment diversification opportunities, and that such opportunities will be missed if the Applicants are not permitted to function as QPAMs pursuant to PTCE 84–14.

2. PaineWebber represents that prior to October 17, 1994, G.E. did not have any ownership interests in any of the Applicants. On October 17, 1994, an agreement was executed (the Agreement) between P.G.I., G.E. and G.E.'s wholly-owned subsidiary Kidder Peabody Group Inc. (Kidder). Pursuant to the Agreement, P.G.I. acquired certain assets of Kidder, and G.E. acquired 21,500,00 shares of P.G.I. common stock, which is the sole outstanding class of P.G.I. securities entitled to vote in the election of P.G.I. directors. The Agreement also resulted in G.E.'s receipt of 2,500,000 shares of redeemable preferred P.G.I. stock, which does not confer the right to vote for directors or any right to convert to shares of common stock, and 1,000,000 shares of convertible preferred P.G.I. stock, which does not confer any right to vote for directors. G.E. has the right, subject to approval of the shareholders of P.G.I., to convert its shares of convertible preferred stock into P.G.I. common stock, and G.E. submitted a proposal at

[9] ''LIBOR'' refers to the arithmetic mean of the London interbank offered quotations for one-month Eurodollar deposits. LIBOR moves up or down as interest rates move up or down. The movement of LIBOR has an inverse relationship on the interest paid on all inverse floating rate classes.

the May 1995 annual P.G.I. shareholders meeting to enable the conversion of G.E.'s convertible preferred stock into common stock. The Applicants represent that it is estimated that G.E. would acquire an additional 5,521,811 shares of P.G.I. common stock through the conversion of the convertible preferred stock, resulting in G.E.'s ownership in the aggregate of approximately 27,021,811 shares, or approximately 26.4 percent of the outstanding shares, of P.G.I. common stock.

3. On three occasions from 1986 through 1992, G.E. pled guilty or was convicted of felonies relating to the government contract activities of G.E. and its subsidiaries (the G.E. Felonies). The Applicants represent that the G.E. Felonies did not in any way relate to any employee benefit plan or any person's authority with respect to an employee benefit plan. The Applicants describe the G.E. Felonies more specifically as follows:

(a) On May 13, 1986, G.E. pled guilty to four counts of filing false claims with the United States Air Force and 104 counts of filing false statements with the United States Air Force in connection with work performed in 1980 by G.E.'s Re- Entry Systems Operation. The Applicants represent that these counts primarily related to individual time cards that were improperly charged to certain government contracts.

(b) On February 2, 1990, G.E. was convicted of mail fraud and violations of the False Claims Act relating to the conduct in 1983 of two contract employees of a G.E. subsidiary, Management and Technical Services Co., involving failure to notify the United States Army that subcontractors had agreed to prices lower than those contained in projections for the project. The Applicants represent that neither G.E. nor any officer or employee of G.E. was accused of having knowledge of the discrepancy and withholding it from the United States Army.

(c) On July 22, 1992 G.E. pled guilty to violations of 18 U.S.C. 287 (submitting false claims against the United States), 18 U.S.C. 1957 (engaging in monetary transactions in criminally derived property), 15 U.S.C. 78m(b)(2)(A) and 78ff(a) (inaccurate books and records), and 18 U.S.C. 371 (conspiracy to defraud and commit offenses against the United States). The Applicants represent that these violations related to a series of events between 1984 and 1990, involving false statements made by employees of G.E. Aircraft Engines Division to a foreign government that led such foreign government to submit false claims to the United States relating to the purchase of weapons.

4. The Applicants represent that the G.E. Felonies did not relate in any way to the conduct or business of PaineWebber, any PaineWebber securities broker or dealer, investment adviser, bank, insurance company or fiduciary. The Applicants maintain, however, that although none of the unlawful conduct involved the Applicants' investment management activities or any plans covered by the Act, the criminal activities described above could preclude each component of PaineWebber, as an affiliate of G.E., from serving as a ''qualified professional asset manager'' (QPAM), due to the provisions of sections I(g) and V(d) of PTCE 84–14. Section I(g) of PTCE 84–14 precludes a person who otherwise qualifies as a QPAM from serving as a QPAM if such person or an affiliate thereof has within the 10 years immediately preceding the transaction been either convicted or released from imprisonment as a result of certain criminal activity, including any crime described in section 411 of the Act. Because the G.E. Felonies involved crimes described in section 411 of the Act and monies transferred to or claimed by G.E., the Applicants represent that they may be barred from qualifying as QPAMs.

5. Accordingly, the Applicants request an exemption to enable PaineWebber and its components and subsidiaries to function as QPAMs despite their failure to satisfy section I(g) of PTCE 84–14 solely because of the G.E. Felonies and the Applicants' affiliation with G.E. The Applicants request that the exemption also apply to wholly-owned PaineWebber subsidiaries that are created or acquired in the future. The transactions covered by the proposed exemption would include the full range of transactions that can be executed by investment managers who qualify as QPAMs pursuant to PTCE 84–14. If granted, the exemption will enable PaineWebber and its direct and indirect wholly-owned subsidiaries to qualify as QPAMs by satisfying all conditions of PTCE 84–14, except that G.E.'s convictions and guilty pleas in connection with the G.E. Felonies shall not prevent satisfaction of the condition stated in section I(g) of PTCE 84–14 because of affiliation with G.E. The exemption, if granted, will relate only to the Applicants' affiliation with G.E. and not to their affiliation with any other persons or entities.[10]

6. The Applicants maintain that because of restrictions on G.E.'s ability to influence the management or policies of the Applicants, there is no cause for concern that the affiliation with G.E. will in any way affect the suitability of any of the Applicants to act as a QPAM. The Applicants represent that the Agreement contains the following restrictions and prohibitions which effectively preclude G.E. from controlling the Applicants: (a) At the annual meeting of P.G.I.'s shareholders, G.E. is required to present its shares to establish a quorum and may only vote its shares either as directed by P.G.I.'s board of directors or in proportion as all other shares are voted on a matter; (b) G.E. has only one representative on P.G.I.'s board of directors, comprised of 15 persons, and no representative on P.G.I.'s executive committee; (c) G.E. is given no right, power or privilege to be consulted on decisions of P.G.I. or to be involved in the day-to-day management of P.G.I.; (d) G.E. has not been given any veto power over any corporate action by P.G.I.; and (e) G.E. is prohibited from soliciting proxies or otherwise obtaining proxies in opposition to the P.G.I. board of directors. The Applicants emphasize that G.E.'s acquisition of an ownership interesting P.G.I. did not result in any integration of the separate businesses of G.E. and the Applicants. To the contrary, the Applicants represent that G.E. merely became a shareholder of P.G.I., and the Applicants' businesses remain entirely separate from G.E.'s business.

Furthermore, the Applicants state that they are committed to a strong legal compliance program, involving their own policies and procedures to promote compliance with applicable laws including the Act. In this regard, the Applicants represent that their internal compliance procedures currently are undergoing revision and updating, including an expansion of the materials relating to fiduciary responsibilities and prohibited transactions under the Act, in order to prevent illegal activity in the conduct of their business. The Applicants state that such expanded discussion of the Act will be reflected in newly-promulgated revisions to P.G.I.'s sales practice policy manual and the branch office managers' supervisory manual, each of which will feature updated legal developments and illustrative examples to make sales staff

[10] For example, any affiliation of the Applicants with any company or individual convicted of any of the felonies described in section 411 of the Act, other than G.E. with respect to the G.E. Felonies described herein, is not within the scope of the exemption proposed herein. Furthermore, any future convictions of or guilty pleas by G.E. for felonies described in part I(g) of PTCE 84–14 are not within the scope of the exemption proposed herein.

aware of the restrictions involved in dealing with employee benefit plans.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied for the following reasons: (a) The G.E. Felonies occurred prior to any affiliation between G.E. and the Applicants, and did not involve any conduct on the part of the Applicants; (b) G.E. does not have control or influence over the operations of the Applicants; (c) The Applicants are undertaking reform and revision of their policies and procedures to prevent illegal activity; and (d) The exemption will permit the Applicants to engage in a broader variety of investments and services on behalf of client employee benefit plans which demand diverse investment opportunities.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

LEGENT Retirement Security Plan (the Plan) Located in Pittsburgh, PA

[Application No. D–10015]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of a limited partnership interest in BPT Union City Associates, Inc. (the BPT Interest) to LEGENT Corporation (LEGENT), a party in interest with respect to the Plan.

This proposed exemption is conditioned upon the following requirements: (1) All terms and conditions of the sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (2) the sale is a one-time transaction for cash; (3) the Plan is not required to pay any commissions, costs or other expenses in connection with the sale; and (4) the Plan receives a sales price which is not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost plus opportunity costs attributable to the BPT Interest.

Summary of Facts and Representations

1. The Plan is a defined contribution plan sponsored by LEGENT, a publicly-held Pennsylvania corporation engaged in supplying systems management solutions to large users of computer technology. As of September 30, 1993, the Plan had net assets available for benefits that totaled $49,202,389 and 1,890 participants.

Prior to September 1, 1993, Mellon Bank (Mellon Bank) served as the Plan trustee. Effective September 1, 1993, Fidelity Investments became the trustee of all of the Plan's assets with the exception of certain limited partnership interests (the Interests). Although Mellon Bank continues to serve as Plan trustee with respect these Interests, which the Plan holds as general assets, effective 1989, the Plan has permitted each participant to direct the investments held in his or her individual account among several funds selected by LEGENT.

2. On July 1, 1977, Morino Inc. (Morino), a Delaware corporation engaged in supplying systems management solutions to users of computer technology, adopted the Morino Associates, Inc. Money Purchase Pension Plan (Morino Pension Plan) and the Morino Associates, Inc. Profit Sharing Plan (Morino Profit Sharing Plan; collectively, the Morino Plans). On October 1, 1989, Morino merged with Duquesne Systems, Inc. (Duquesne) and formed LEGENT. Effective October 1, 1989, the Morino Pension Plan merged into the Duquesne Systems, Inc. Pension Plan and the Morino Profit Sharing Plan merged into the Duquesne Systems, Inc. Profit Sharing Plan. The resulting merged plans were amended and restated effective October 1, 1989 as the LEGENT Corporation Pension Plan and the LEGENT Corporation Savings Plan, respectively. Subsequently on October 1, 1992, the LEGENT Corporation Savings Plan was amended and restated as the Plan to reflect the merging of the LEGENT Corporation Pension Plan and the Goal Systems International, Inc. Profit Sharing Plan into the LEGENT Corporation Savings Plan due to the merger of Goal Systems International, Inc. into LEGENT.

3. Among the assets of the Plan is a 6 percent limited partnership interest in BPT, a Tennessee limited partnership that was organized to acquire, own, operate and sell a strip shopping center located in Union City, Tennessee. BPT is an unrelated party. In a private offering memorandum dated June 5, 1985, BPT made an aggregate offering to investors of $1,548,680. In accordance with the terms of the memorandum, BPT offered to sell 35 limited partnership units for a per unit purchase price of $25,677 and 35 participation notes for an issuance price per note of $18,571. The participation notes consist of second deeds of trust on real property and they mature on July 31, 1995.

The Morino Pension Plan and the Morino Profit Sharing Plan acquired two and three participation notes, respectively, from unrelated parties on August 30, 1985 for a total purchase price of $92,855. The acquisition of the BPT Interest was made at the direction of Morino. Although the Plan received income totaling $20,341 from BPT for the years 1990 and 1991, no further income payments were made to the Plan after 1991.

To the extent known, none of the obligors of the notes are parties in interest with respect to the Plan. In addition, the general partners of BPT and the investors in such limited partnership are not related to the Plan or its predecessors. Further, it is represented that LEGENT has never invested in BPT.

4. When Morino was merged with Duquesne, the existing Plan accounts invested in the BPT Interest were not intially frozen. Because the former Morino Plans did not offer individual participant investment elections, the Plan has held the BPT Interest as a general asset with a portion of such Interest being allocated to all participants in the Morino Plans. As these participants terminated their employment with Duquesne, their allocable portion of the BPT Interest was purchased by the Plan using the cash generated from such Interest. The remaining portions of the participant accounts that were invested in the BPT Interest were frozen when Mellon Bank determined that the BPT Interest had no value and there was insufficient cash to purchase any additional portions from terminating employees. Accordingly, LEGENT froze the remaining accounts invested in the BPT Interest. As of January 13, 1995, the BPT Interest was allocated to the accounts of eighty-six former Morino employees.

5. LEGENT represents that the BPT Interest is a highly illiquid investment for which there is a very limited secondary market.[11] Mellon Bank represents, in a letter dated November 29, 1993, that it has made every effort to sell the BPT Interest to unrelated parties. However, due to the insufficient secondary market, no purchaser has

[11] The Department expresses no opinion, in this proposed exemption, on whether Plan fiduciaries violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act in acquiring and holding the BPT Interest.

been found. Accordingly, LEGENT requests an administrative exemption from the Department in order to purchase the BPT Interest from the Plan.

6. Mellon Bank proposes to sell the BPT Interest to LEGENT for not less than the greater of: (a) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (b) the total acquisition cost and opportunity costs attributable to the BPT Interest. The proposed sale will be a one-time transaction for cash. In addition, the Plan will not be required to pay any fees, commissions or expenses in connection with the sale. Mellon Bank represents that it will determine, prior to the sale, whether such transaction is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries.

7. In an appraisal report dated October 20, 1994, G. Dan Poag, President of Bright, Poag & Thompson, Inc., the general partner of BPT, states that the BPT Interest has no fair market value. Mr. Poag explains that the investor notes are subordinate to the first mortgage and have not been serviced in some time. In an addendum to his appraisal report of April 17, 1995, Mr. Poag again confirms that the BPT Interest has a current fair market value of zero as of that date.

8. Because the fair market value of the BPT Interest is less than its acquisition cost, LEGENT will purchase the BPT Interest from the Plan for the latter amount. In addition, LEGENT represents that because the Plan did not receive an adequate rate of return on the BPT Interest, it will pay $18,922 to make up for the Plan's lost opportunity costs.[12]

Accordingly, LEGENT will purchase the BPT Interest from the Plan for an aggregate purchase price of $111,777.[13]

9. In summary, it is represented that the transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) All terms and conditions of the sale will be at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; (b) the sale will be a one-time transaction for cash; (c) the Plan will not be required to pay any commissions, costs or other expenses in connection with the sale; (d) the Plan will receive a sales price not less than the greater of: (1) The fair market value of the BPT Interest as determined by a qualified, independent appraiser, or (2) the total acquisition cost plus opportunity costs that are attributable to the BPT Interest; and (e) Mellon Bank will determine that the sale is appropriate transaction for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons by first-class mail within 30 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment on and/or to request a hearing. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

KeyCorp 401(k) Savings Plan (the Plan) Located in Cleveland, Ohio

[Application No. D–10023]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of funds (the Loan) to the Plan by KeyCorp (the Employer), the sponsor of the Plan, with respect to Guaranteed Investment Contract No. 62149 (the GIC) issued by Confederation Life Insurance Company of Canada (Confederation), and the potential repayment by the Plan of the Loan upon receipt of payments under the GIC; provided the following conditions are satisfied: (a) No interest and/or other expenses are paid by the Plan in connection with the Loan; (b) All of the terms and conditions of the proposed Loan are no less favorable to the Plan than those which the Plan could obtain in an arm's-length transaction with an unrelated party; (c) The Loan will be no less than the amount described in this Notice of Proposed Exemption; (d) The repayment of the Loan will not exceed the total amount of the Loan; (e) The repayment of the Loan by the Plan will be restricted to funds paid to the Plan under the GIC by Confederation or other responsible third parties with respect to the GIC; and (f) The repayment of the Loan will be waived to the extent the amount of the Loan exceeds the proceeds the Plan receives from the GIC.

Summary of Facts and Representatives

1. The Employer is a financial service holding company headquartered in Cleveland, Ohio, and registered under the Federal Bank Holding Company Act of 1956. The Key Trust Company of Ohio (Key Bank) is a wholly owned subsidiary of the Employer. Society Corporation merged with and into KeyCorp effective March 1, 1994, with Society Corporation becoming the legal successor-in-interest. Also on March 1, 1994, Society Corporation changed its name to KeyCorp. The Society National Bank, formerly a subsidiary of Society Corporation, is now Key Bank.

2. The Plan is a defined contribution profit sharing plan with a cash or deferred arrangement as provided in section 401(k) of the Code, and an employee stock ownership plan as provided in section 4975(e)(7) of the Code. Participants are permitted to direct the investment of their individual accounts among five investment funds, the Equity Fund, the Money Market Fund, the Balanced Fund, the Bond Fund, and the Corporation Stock Fund. Key Bank is the trustee for four of the five investment funds, and Wachovia Bank of North Carolina is the Trustee of the Plan's Corporation Stock Fund. Approximately 21,000 employees of the

[12] LEGENT represents that the average rates of return for the remaining assets that were held each year by its predecessor Plans is a fair measure of the Plan's lost opportunity costs. Therefore, LEGENT has calculated interest on the amount invested in the BPT Interest for the Plan Years beginning after September 30, 1991 since BPT paid dividends to the Plan through 1991. Using this method of calculation, LEGENT represents that the BPT Interest would have earned aggregate opportunity costs of $18,922.

[13] The applicant represents that the amount by which the purchase price for the BPT Interest exceeds its fair market value, if treated as an employer contribution to the Plan, when added to the balance of the annual additions to such Plan, will not exceed the limitation prescribed by section 415 of the Code.

Employer and its affiliates participate in the Plan. The Plan had assets of $80.8 million as of April 24, 1995.

3. On April 19, 1990, Society National Bank (now, Key Bank) as trustee for the Society Corporation Employee Stock Purchase and Savings Plan (now, the Plan) entered into an agreement with Confederation's Atlanta, Georgia office to purchase the GIC. Under the terms of the GIC, the Plan deposited $1 million at a guaranteed interest rate of 9.4% for 5 years. Pursuant to the terms of the GIC, interest of $94,000 was to be paid on April 16 of each year until the expiration date of the GIC on April 16, 1995. On April 16, 1995 a final payment of $1,094,000 was due to the Plan. In accordance with the terms of the GIC, all interest due was paid to the Plan through April 1994.

On August 11, 1994, the Canadian operations of Confederation were placed in conservatorship and rehabilitation by Canadian regulators. The next day, August 12, 1994, the Michigan Insurance Commission similarly placed Confederation's United States operations into conservatorship and rehabilitation.[14] Consequently, on April 16, 1995, the final payment of $1,094,000 due the Plan under the GIC was not paid. In addition, the applicant represents that it is uncertain as to what portion of the defaulted interest and principal will be paid to the Plan and what timeframe and payment terms will be forthcoming as part of the rehabilitation proceedings.

4. In order to prevent any loss to the Plan, the Employer wishes to make the Loan under the terms described herein. The amount of the Loan will be the final payment due the Plan under the GIC ($1,094,000) plus interest on such amount from April 16, 1995, at the rate of interest earned by the Plan's Bond Fund to the date of the Loan.

The applicant represents that the Bond Fund is primarily invested in the Victory Limited Term Income Fund which is an open-end mutual fund (the Mutual Fund). The Mutual Fund prospectus states that the Mutual Fund invests in high grade fixed income securities with an average maturity of between two and five years. In addition, the Bond Fund holds a second GIC which is not the subject of this proposed exemption. For the three month period ended March 31, 1995, the Bond Fund had a return of 2.87%.

5. No interest or other expenses will be paid by the Plan pursuant to the transaction. Repayment of the Loan is limited to the amounts received by the Plan from Confederation or any other responsible third parties making payment on behalf of Confederation. The Employer will have no recourse against the Plan or any participants or beneficiaries for additional funds to repay the Loan. To the extent the amounts received from Confederation and responsible third parties are insufficient to repay the Loan, repayment will be waived. In no event will the repayment exceed the amount of the Loan.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because: (a) The Plan will receive the full amount due under the GIC plus interest from the GIC's maturity date to the date of the Loan; (b) no interest or other expenses will be paid by the Plan; (c) the repayment of the Loan is restricted to amounts received from Confederation and other responsible third parties with respect to the GIC; (d) the repayment will not exceed the amount of the Loan; and (e) repayment will be waived to the extent that the proceeds received with respect to the GIC are less than the amount of the Loan.

NOTICE TO INTERESTED PERSONS: Notice to interested persons will be provided within 30 days of the publication of this Notice in the **Federal Register**. Comments and requests for a hearing are due 60 days from the date of publication of this Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles S. Edelstein of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 26th day of June, 1995.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 95–16063 Filed 6–28–95; 8:45 am]

BILLING CODE 4510–29–P

[14] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility provisions of Part 4, Subtitle B, of Title I of the Act. In this regard, the Department is not herein proposing relief for any violations of Part 4 which may have arisen as a result of the acquisition and holding of the GIC by the Plan.

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application from Adventure Network International (ANI) associated with touristic activities at several locations in Antarctica, submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before July 31, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Robert S. Cunningham or Peter R. Karasik at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant and for the release of waste in Antarctica. NSF has received a permit application under this regulation which covers the waste management activities of U.S. citizens participating in antarctic tours managed by ANI. The permit applicant is: Ms. Anne Kershaw, Adventure Network International, Canon House, 27 London End, Beaconsfield, Bucks. HP9 2HN U.K.

ANI offers climbing trips to Vinson Massif, the Ellsworth Mountains, and the Transantarctic Mountains; ski trips to the Ellsworth Mountains; and flights to the South Pole and the Emperor Penguin colony at the Dawson Lambton Glacier as well as trips to other antarctic locations. The permit application is limited to the waste management activities of U.S. citizens participating in the programs. The proposed duration of the permit is from October 25, 1995 through October 24, 2000.

Activity for Which Permit Requested

ANI takes groups which include up to 15 U.S. citizens to locations of tourists interest in Antarctica. In some of the tours, 93 percent octane gasoline is used for vehicles and equipment; propane is used for cooking and heating; and unleaded kerosene (white gas) is used in small camping stoves for cooking by field parties. These substances are designated pollutants under antarctic waste regulations. Wastes and unused supplies are packed out and returned to Punta Arenas, Chile. Conditions of the permit will include requirements to educate all participants with the requirements of the Antarctic Conservation Act (ACA), report on the removal of materials and any accidental releases, and mange human waste in accordance with antarctic waste regulations.

Robert S. Cunningham,

Environmental Compliance Manager, Office of Polar Programs, National Science Foundation.

[FR Doc. 95–16021 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Committee Management; Renewals

The Assistant Directors having responsibility for the 29 Advisory Committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Advisory Committee for Small Business Industrial Innovation (#61) [formerly called Advisory Committee for Industrial Innovation Interface]
Advisory Committee for Biological Sciences (#1110)
Advisory Committee for Education & Human Resources (#1119)
Advisory Committee for Polar Programs (# 1130)
Advisory Panel for Biochemistry & Molecular Structure & Function (#1134)
Advisory Panel for Cell Biology (#1136)
Advisory Panel for Developmental Mechanisms (#1141)
Advisory Panel for Genetics & Nucleic Acids (#1149)
Advisory Panel for Neuroscience (#1158)
Advisory Panel for Physiology and Behavior (#1160)
Advisory Committee for Engineering (#1170)
Alan T. Waterman Award Committee (#1172)
Federal Networking Council Advisory Committee (#1177)
Special Emphasis Panel in Science Resources Studies (#1211)
Advisory Panel for Instrumentation & Instrument Development (#1215)
Special Emphasis Panel in Science & Technology Infrastructure (#1373)
Earth Sciences Proposal Review Panel (#1569)
Advisory Panel for Ecological Studies (#1751)
Advisory Panel for Long-Term Projects in Environmental Biology (#1752)
Advisory Panel for Systematic & Population Biology (#1753)
Special Emphasis Panel in Biological Sciences (#1754)
Advisory Committee for Geosciences (#1755)
Special Emphasis Panel in Geosciences (#1756)
Advisory Panel for Anthropological & Geographic Sciences (#1757)
Advisory Panel for Cognitive, Psychological & Language Sciences (#1758)
Advisory Panel for Economic, Decision & Management Sciences (#1759)
Advisory Panel for Science, Technology & Society (#1760)
Advisory Panel for Social & Political Sciences (#1761)
Special Emphasis Panel in Social, Behavioral & Economic Research (#1766)

Authority for these Committees will expire on June 30, 1997, unless they are renewed.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16035 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Biological Sciences; Committee of Visitors; 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: Committee of Visitors (COV) Review of the Genetics and Nucleic Acids Cluster in the Division of Molecular and Cellular Biosciences.

Date and Time: Thursday, July 20 through Friday, July 21, 1995; 8:30 A.M. to 5:00 P.M.

Place: The National Science Foundation, Room 340, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Maryanna Henkart, Acting Division Director for Molecular and Cellular Biosciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia. Telephone: (703) 306–1440.

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 Genetics and Nucleic Acids Cluster in the Division of Molecular & Cellular Biosciences.

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 were 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: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16031 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil and Mechanical 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 (1205).

Date and Time: July 17 and July 18, 1995; 8:30 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 530, Arlington, Virginia.

Contact Person: Dr. Devendra P. Garg, Program Director, Dynamic Systems & Control Program, Division of Civil and Mechanical Systems, Room 545, NSF, 4201 Wilson Blvd., Arlington, VA 22230 703/306–1361, x5068.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research 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 Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16029 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design, Manufacture and Industrial Innovation; 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: Special Emphasis Panel in Design, Manufacture and Industrial Innovation (#1194)

Date and Time: July 20, 1995, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 565.

Type of Meeting: Closed.

Contact Person: Mr. Charles R. Hauer, Program Manager, Small Business Innovation Research, National Science Foundation, 4201 Wilson Boulevard, Arlington VA 22230. Telephone: (703) 306–1391.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research [SBIR] proposals as part of the selection 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. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16032 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Engineering; 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 Committee for Engineering (# 1170).

Date and Time: July 20–21, 1995: 8:00 AM–5:00 PM.

Place: 4201 Wilson Boulevard, Arlington, Virginia, Rooms 530 and 580.

Type of Meeting: Closed.

Contact Person: Dr. Joy Pauschke, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, 22230. Telephone: (703) 306–1380.

Purpose of Meeting: Committee of Visitors, Engineering Education Programs, Engineering Education and Centers Division. To provide assessment of program-level technical and managerial matters pertaining to proposal decisions and program operations.

Agenda: To assess the proposal review process and technical management of the Engineering Education Coalitions and the Combined Research Curriculum Development programs.

Reason for Closing: The files 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: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16028 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences Committee of Visitors; 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 Mathematical and Physical Sciences Committee of Visitors.

Date and Time: July 20–21, 8:30 am–5:00 pm.

Place: Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: John B. Hunt, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1857.

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 all of the programs of the Division of Chemistry.

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: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16033 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; 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: Special Emphasis Panel in the Polar Programs.

Date and Time: July 20, 1995; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Room 730.

Type of Meeting: Closed.

Contact Person: Dr. Polly A. Penhale, Program Manager, OPP, Room 755 Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Southern Ocean Joint Global Ocean Flux Modelling 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: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16030 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Systemic Reform; 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 Code: Special Emphasis Panel in Systemic Reform (1765).

Date and Time: July 12, 1995 (6:00–8:00 pm); July 13–14, 1995 (8:30–5:00 pm).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Madeleine J. Long, Daniel D. Burke, Richard P. Mesa, or Paula B. Duckett, Program Directors for Urban Systemic Initiatives Program, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1684.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Urban Systemic 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: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16034 Filed 6–28–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; 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 Undergraduate Education.

Date and Time: July 17, 1995 7:30 p.m. to 9:00 p.m.; July 18, 1995; 8:30 a.m. to 5:00 p.m.; July 19, 1995; 8:30 a.m. to 5:00 p.m.; July 20, 1995; 8:30 a.m. to 2:00 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Person: Dr. Herbert Levitan, Section Head, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1666.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Course and Curriculum Development-Mathematical Sciences and their Application throughout the Curiculum (CCD-MATH) Panel Meeting.

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. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: June 26, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–16027 Filed 6–28–95;8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–445]

Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Unit 1); Exemption

I

Texas Utilities Electric Company (the licensee) is the holder of Facility Operating License No. NPF–87 for the Comanche Peak Steam Electric Station (CPSES), Unit No. 1. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Somervell County, Texas.

II

The Code of Federal Regulations, 10 CFR 50.55a(f)(4)(ii), requires that inservice tests to verify operational readiness of pumps and valves, whose function is required for safety, conducted during successive 120-month intervals must comply with the requirements of the latest edition and addenda of Section XI of the ASME Boiler and Pressure Vessel Code incorporated by reference in paragraph (b) of 10 CFR 50.55a, twelve months prior to the start of the 120-month interval.

NRC regulations in 10 CFR 50.12(a) provide for specific exemptions from the requirements of the regulation in Part 50 if: (1) The exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security; and, (2) special circumstances are present. The regulations in, 10 CFR 50.12(a)(2)(ii) provide that special circumstances are present where application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.55a(f)(4)(ii) is to assure that inservice test (IST) programs are routinely updated to conform to advances in the industry in order to assure continued operability of pumps and valves required for safe operation.

III

Pursuant to 10 CFR 50.12, the licensee requested on March 1, 1994, an exemption from the requirement of 10 CFR 50.55a(f)(4)(ii) which would allow the first periodic 120-month interval revision for the CPSES Unit I IST plan to be based on the Unit 2 commercial operation date (August 3, 1993). The first periodic interval for Unit 1 is currently based on the Unit 1 commercial operation date (August 13, 1990). The staff had requested additional information to supplement the March 1, 1994, letter. The licensee provided the requested information in its letter dated August 12, 1994.

CPSES Unit 1 and Unit 2 began commercial operation approximately three years apart and are therefore on different schedules for periodic IST program revisions. In order to maintain the consistency of the IST program between CPSES Units 1 and 2, the licensee intends to perform future 120-month program revisions for both units coincidently. The licensee proposes to accomplish this by performing all future IST program revisions for both units at 120-month intervals based on the Unit 2 commercial operation date. This would effectively extend the first test interval for Unit 1 from 120 months to approximately 156 months.

At the licensee's request, the NRC staff previously granted permission to use the later approved 1989 edition of American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME) Section XI for the interval of inservice testing at CPSES Unit 2 and at the same time granted permission to update the Unit 1 IST program to the use of that same Code. Effectively, the pumps and valves at CPSES Units 1 and

2 are being tested to the requirements of a later Code edition that might otherwise not be required to be implemented until the year 2000 for Unit 1 and the year 2003 for Unit 2. The changes to the 1989 edition of ASME Section XI regarding pump and valve testing represent a substantial technical improvement over the 1986 edition not usually found from edition to edition. Since none of the IST test frequencies are directly tied to the 120-month interval, except for safety and relief valve testing, the test frequencies are unchanged and remain compliant with the committed edition of the code or as modified by approved relief requests. The schedule for safety and relief valves must be maintained on a five- or ten-year frequency; however, this can be accomplished even if both units are placed on a concurrent interval.

IV

Therefore, based on these considerations, it is unlikely that the IST program for Unit 1 will not be updated such that there would be an increase in the risk of failure for operational readiness of pumps and valves whose function is required for the safety of Unit 1. Since the Unit 1 IST was updated to the Code edition required to support the commercial operation of Unit 2 on August 3, 1993, Unit 1 was effectively updated per 10 CFR 50.55a(f)(4)(ii) at that time. Thus, using that date as the start of the 120-month interval will achieve the underlying purpose of 10 CFR 50.55a(f)(4)(ii). However, as noted above, the licensee must maintain the safety and relief valve testing on a 5- and 10-year frequency, in accordance with American National Standards Institute (ANSI)/ASME OM–1, which is referenced in the 1989 edition of ASME Section XI as applicable for testing of safety and relief valves.

Consequently, the Commission concludes that the special circumstances of 10 CFR 50.12(a)(2)(ii) exist in that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule.

Further, it is advantageous for a facility with two similar units to implement an IST program which is consistent between units by testing each unit to the same Code edition and by scheduling 120-month program updates on each unit to coincide. CPSES Units 1 and 2 are similar units and the licensee has therefore attempted to capture these advantages through the use of one IST program which specifies the same test requirements for both units based on the same Code Edition.

The advantages include a significant reduction in the administrative effort required in preparing periodic program updates, a corresponding reduction in the program review effort by the NRC staff and a reduction in the potential for personnel errors in the performance of testing requirements. Further, a significant unit difference is eliminated by applying the same Code requirements to the testing of both units. In addition, this exemption increases plant safety through simplification and standardization of plant testing procedures, does not present an undue risk to the public health and safety, and is consistent with the common defense and security.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest and that the special circumstances required by 10 CFR 50.12(a)(ii) are present. Therefore, the Commission hereby grants Texas Utilities Electric Company an exemption from those requirements of 10 CFR 50.55a(f)(4)(ii) such that the CPSES Unit 1, periodic 120-month IST program interval revisions will be based on the Unit 2 commercial operation date (August 3, 1993).

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (60 FR 32356). This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of June 1995.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 95–15965 Filed 6–28–95; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management Accountability and Control

AGENCY: Office of Management and Budget.

ACTION: Final Revision of OMB Circular No. A–123.

SUMMARY: This Notice revises Office of Management and Budget (OMB) Circular No. A–123, ''Management Accountability and Control.'' The Circular, which was previously titled ''Internal Control Systems,'' implements the Federal Managers' Financial Integrity Act of 1982 (FMFIA).

FOR FURTHER INFORMATION CONTACT: Office of Management and Budget, Office of Federal Financial Management, Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503, telephone (202) 395–6911 and fax (202) 395–3952. For a copy of the revised Circular, contact Office of Administration, Publications Office, room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

ELECTRONIC ACCESS: This Circular is also accessible on the U.S. Department of Commerce's FedWorld Network under the OMB Library of Files.

- The Telnet address for FedWorld via Internet is ''fedworld.gov''.
- The World Wide Web address is ''http://www.fedworld.gov/ftp.htm#omb''.
- For file transfer protocol (FTP) access, the address is ''ftp://fwux.fedworld.gov/pub/omb/omb.htm''.

The telephone number for the FedWorld help desk is (703) 487–4608.

SUPPLEMENTARY INFORMATION:

A. Background

Circular No. A–123 was last issued on August 4, 1986. On March 13, 1995 the Office of Management and Budget requested public comments on a revised version of the Circular (60 FR 13484).

The revision announced here alters requirements for executive agencies on evaluating management controls, consistent with recommendations made by the National Performance Review. The Circular now integrates many policy issuances on management control into a single document, and provides a framework for integrating management control assessments with other work now being performed by agency managers, auditors and evaluators.

The Circular emphasizes that management controls should benefit rather than encumber management, and should make sense for each agency's operating structure and environment. By giving agencies the discretion to determine which tools to use in arriving at the annual assurance statement to the President and the Congress, the Circular represents an important step toward a streamlined management control program that incorporates the reinvention principles of this Administration.

B. Analysis of Comments

Thirty-three responses were received from 23 Federal agencies and the

American Institute of Certified Public Accountants (AICPA). Of the 33 responses, 14 simply agreed with the proposed revision and made no comments on the document, although some had minor comments on a proposal by the Chief Financial Officers' Council to streamline reporting. Almost all of the remaining 19 responses were also in favor of the revision, but made some specific suggestions.

A summary of the transmittal memorandum and the five sections of the Circular follows. Each section indicates which comments were accepted and which were not accepted.

Transmittal Memorandum. This memorandum, signed by the OMB Director, summarizes the purpose, authority, and policy reflected in the Circular, the actions required, and related administrative information. Four agencies made comments relating to the memorandum.

Comments Accepted: The statement describing management accountability is now repeated in Section I of the Circular. The definition of management controls (which appears in both the memorandum and Section II) has been amended to state that controls should ensure reliable ''and timely'' information. The requirement that agencies report annually on management controls is now explicitly stated in the memorandum. In addition, OMB has added instructions on accessing the Circular electronically.

Comment Not Accepted: One agency suggested that performance appraisals be used to hold managers accountable for management control responsibilities. OMB supports this concept but prefers that the specific content of appraisals be left to each agency.

Section I. Introduction. This section describes a framework for agency management control programs that integrates management control activities with other management requirements and policies, such as the Government Performance and Results Act (GPRA), the Chief Financial Officers (CFOs) Act, the Inspector General (IG) Act, and other congressional and Executive Branch requirements. The foundation of this policy is that management control activities are not stand-alone management practices, but rather are woven into the day-to-day operational responsibilities of agency managers.

Agencies are encouraged to plan for how the requirements of the Circular will be implemented. Agencies are also encouraged to establish senior level management councils to address management accountability and related issues within the broad context of agency operations.

Comments Accepted: At the suggestion of three agencies, the language illustrating how controls can be integrated into the overall management process has been clarified. The text now indicates more clearly that the examples used to make this point are in fact examples, not new Circular requirements. Because the Act encompasses agency operations, as well as program and administrative areas, appropriate language has been included in the Circular. In addition, the Circular states that 24 agencies are covered by the CFOs Act, which reflects the legislation last year that made the Social Security Administration an independent agency from the Department of Health and Human Services.

Comments Not Accepted: Two agencies questioned elimination of the Management Control Plan. The importance of planning has not been diminished in the new Circular, but OMB will no longer dictate the scope and content of an agency's planning document. An agency may choose, for example, to meet the Circular's planning requirement by addressing management controls in a broader strategic plan for agency management.

Section II. Establishing Management Controls. This section defines management controls, and requires agency managers to develop and implement appropriate management controls. Included in this section are general and specific management control standards, drawn in large part from the standards issued by the General Accounting Office (GAO). By including these standards in the Circular, OMB is continuing its efforts to integrate various management control policies into a single document to make it easier for Federal managers to implement good management controls.

Comments Accepted: Four agencies questioned whether the definition of internal controls as a subset of management controls should be limited to conditions ''that could have a material effect on [the entity's] financial statements.'' One agency pointed out that deficiencies in internal controls related to events that have less than a major impact on financial statements, like security weaknesses or conflict of interest problems, could be reportable under the Integrity Act. OMB agrees and has deleted the restrictive phrase.

In response to one agency's comment, language on developing management controls has been expanded to emphasize that controls must be developed as programs are initially implemented, as well as reengineered. At another agency's suggestion, a statement has been included on the value of drawing on the expertise of the CFO and IG as controls are developed.

Responding to two agencies' comments on the standards for management controls, the standard on compliance with law has been expanded to included compliance with regulations, and the standard on delegation of authority now clearly states that managers should ensure that authority, responsibility and accountability are defined and delegated.

Comments Not Accepted: The AICPA recommended that the Circular adopt the framework and definitions of internal controls developed by the Committee of Sponsoring Organizations of the Treadway Commission (the COSO framework). OMB has carefully reviewed the COSO approach and feels confident that the Circular incorporates virtually all of the concepts underlying the COSO framework. It is critical, however, for the Circular to present these concepts in language that is meaningful to Federal program managers as well as financial managers. Therefore, OMB has decided to retain the Circular's broader terminology.

One agency questioned OMB's authority to (i) include management control standards in the Circular and (ii) modify the language of GAO's Standards for Internal Control. OMB has included GAO in discussions about the Circular's revision since the beginning of the effort, and has provided GAO with the opportunity to comment on numerous drafts of the document. GAO has not objected to inclusion of the standards in the Circular, nor has GAO questioned the document's specific language. OMB believes that the Circular accurately incorporates the GAO standards, and appropriately updates the language to reflect developments in this area since GAO issued its standards in 1983.

Two agencies recommended more flexibility in the standard relating to separation of duties, arguing that the principle may be overly rigid in an era of downsizing. One agency described the difficulty of applying this standard in small field offices, and suggested that alternative controls based on advanced technology, such as systems access controls and automated audit trails, may be appropriate. While OMB believes that separation of duties is a key management control standard, it recognizes the validity of these examples. The standard has not been modified because appropriate flexibility is already provided; the language states that key duties ''should'' be separated among individuals.

One agency questioned whether the Circular adequately emphasizes the

concept of reasonable assurance. OMB recognizes the importance of this concept, and believes that its inclusion as one of the general management control standards is sufficient.

Section III. Assessing and Improving Management Controls. This section states that agency managers should continuously monitor and improve the effectiveness of management controls. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual assessment of and report on management controls. Agencies are encouraged to use a variety of information sources to arrive at the annual assurance statement to the President and the Congress. Several examples of sources of information are included in this section. The role of the agency's senior management council in making recommendations on the annual assurance statement and on which deficiencies in management controls should be considered material is also addressed.

Comments Accepted: OMB recognizes the need to clarify how the term ''material weakness'' as used in the Circular differs from the same term as used by Federal auditors. This issue was raised by one agency in its written comments, and by other parties in discussions of earlier drafts. The Circular now recognizes that Federal auditors are required to identify and report weaknesses that, in their opinion, pose a risk or threat to the internal control systems of an entity (such as a program or operation) even if the management of that entity would not report the weakness outside the agency.

Comments Not Accepted: Two agencies found the Circular's requirements on assessing and documenting the sufficiency of management controls to be inadequate, and suggested that the Circular provide more specific guidance in these areas. In keeping with the philosophy behind the Circular, OMB prefers to give agencies the latitude to expand upon the Circular's requirements in these areas, if they believe it is necessary, rather than to impose uniform criteria for determining, for example, what should be reported as a material weakness.

Along those lines, OMB has chosen not to adopt the definitions used by Federal auditors of a reportable condition and material weakness, as advocated by one agency and the AICPA. Those definitions are weighted heavily toward technical, financially-oriented terms that are probably not meaningful to Federal program managers. They also focus on financial statements as the primary end-product of an internal control structure. While financial statements are important tools for the agency head in arriving at an assurance statement on management controls, they are not the only source of information for making this determination. Therefore, it is important that the Circular use language that accurately reflects the broad nature of agency management controls.

Two agencies felt that the Circular should require that agencies test their management controls. OMB agrees that testing is an important method for determining whether controls actually work, and encourages agencies to use some form of testing. Because testing is already implicit in several of the information sources to be used to assess controls, and is less feasible for other information sources, it is not included as a blanket requirement.

Three agencies commented on the composition of an agency's senior management council; two felt that the Circular should be more specific in discussing membership, while one found this section too prescriptive. OMB believes that the current language adequately addresses the importance of including both line and staff management and involving the IG, without infringing on the agency's ability to determine the council's membership.

Section IV. Correcting Management Control Deficiencies. This section states that agency management is responsible for taking timely and effective action to correct management control deficiencies. Correcting these deficiencies is an integral part of management's responsibilities and must be considered a priority by the agency.

The only comment received on this section reflected a misunderstanding of the Circular's requirements on corrective action plans. Plans must be developed, tracked, and reported for all material weaknesses (weaknesses included in the Integrity Act report). For weaknesses that are not included in the report, plans should be developed and tracked at a level deemed appropriate by the agency.

Section V. Reporting on Management Controls. This section describes the required components of the agency's annual Integrity Act report and its distribution to the President and the Congress. This section also describes a initiative to streamline reporting by consolidating Integrity Act information with other performance-related reporting into a broader ''Accountability Report'' to be issued annually by the agency head. Lastly, this section presents Integrity Act requirements as they pertain to government corporations pursuant to the CFOs Act.

Comments Accepted: At the suggestion of two commenters, agencies are now encouraged to make their Integrity Act reports available electronically. The reference to a House committee has been changed to reflect the nomenclature of the 104th Congress.

This section also describes an new approach towards financial management reporting that could help integrate management initiatives. This approach is being pilot-tested by several agencies for FY 1995. Further information on the implications of this initiative for other agencies will be issued by OMB after the pilot reports have been evaluated.

Comments Not Accepted: One agency questioned the wisdom of permitting agencies to provide a qualified statement of assurance. OMB expects agencies to provide the most direct possible statement of assurance. The option of a qualified statement recognizes that in some cases, the most accurate statement of assurance is one that is qualified by exceptions that are explicitly noted.

The same agency suggested new language in the reporting section to recognize that the Circular broadens the scope of internal control accountability beyond the requirements of the Integrity Act. OMB disagrees with the premise that the link between management controls and program performance is a new one. While the Integrity Act uses financially oriented terminology, the Act ''clearly encompasses program and administrative areas, as well as the more traditional accounting and financial management areas'' (House Report 98–937, ''First-Year Implementation of the Federal Managers' Financial Integrity Act,'' Committee on Government Operations, August 2, 1984, p. 1).

General Issues. Some comments were not limited to specific sections of the Circular.

Comments Accepted: In response to one agency's suggestion, the acronym ''FMFIA'' has been replaced throughout the Circular by the term ''Integrity Act'' to better emphasize the purpose and scope of the law. OMB has also modified the term ''should'' in several instances where specific agency action is required.

Comments Not Accepted: Two agencies proposed that the Circular broaden the linkage between management controls and other management initiatives, particularly performance measurement and implementation of GPRA. OMB encourages agencies to integrate their efforts to evaluate management controls and program performance, but is not

prepared at this time to include policy guidance on performance measurement in this Circular.

One agency proposed inclusion of language describing the applicability of the Circular to discretionary policy matters, as had been done in the 1986 version. OMB does not believe that this language is necessary because it is clear that the President and agency head have full discretion over policymaking functions, including determining and interpreting policy, determining program need, making resource allocation decisions, and pursuing rulemaking.

Two agencies suggested that the Circular specifically address OMB's High Risk Program. OMB has chosen not to do so because implementation of the management control program outlined in the Circular will likely eliminate the need for separate tracking of high risk areas. If agencies report their most serious management deficiencies to the President and the Congress as envisioned by the Circular, the Integrity Act reports will essentially reflect the highest risk areas in government, and a separate High Risk Program may no longer be necessary.

John B. Arthur,

Associate Director for Administration.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Management and Budget

[Circular No. A–123, Revised]

June 21, 1995.

To the Heads of Executive Departments and Establishments

From: Alice M. Rivlin, Director
Subject: Management Accountability and Control

1. *Purpose and Authority.* As Federal employees develop and implement strategies for reengineering agency programs and operations, they should design management structures that help ensure accountability for results, and include appropriate, cost-effective controls. This Circular provides guidance to Federal managers on improving the accountability and effectiveness of Federal programs and operations by establishing, assessing, correcting, and reporting on management controls.

The Circular is issued under the authority of the Federal Managers' Financial Integrity Act of 1982 as codified in 31 U.S.C. 3512.

The Circular replaces Circular No. A–123, ''Internal Control Systems,'' revised, dated August 4, 1986, and OMB's 1982 ''Internal Controls Guidelines'' and associated ''Questions and Answers'' document, which are hereby rescinded.

2. *Policy.* Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls are the organization, policies, and procedures used to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision making.

3. *Actions Required.* Agencies and individual Federal managers must take systematic and proactive measures to (i) develop and implement appropriate, cost-effective management controls for results-oriented management; (ii) assess the adequacy of management controls in Federal programs and operations; (iii) identify needed improvements; (iv) take corresponding corrective action; and (v) report annually on management controls.

4. *Effective Date.* This Circular is effective upon issuance.

5. *Inquiries.* Further information concerning this Circular may be obtained from the Management Integrity Branch, Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, 202/395–6911.

6. *Copies.* Copies of this Circular may be obtained by telephoning the Executive Office of the President, Publication Services, at 202/395–7332.

7. *Electronic Access.* This document is also accessible on the U.S. Department of Commerce's FedWorld Network under the OMB Library of Files.

- The Telnet address for FedWorld via Internet is ''fedworld.gov''.
- The World Wide Web address is ''http://www.fedworld.gov/ftp.htm#omb''.
- For file transfer protocol (FTP) access, the address is ''ftp://fwux.fedworld.gov/pub/omb/omb.htm''.

The telephone number for the FedWorld help desk is 703/487–4608.

Attachment.

Attachment

I. Introduction

The proper stewardship of Federal resources is a fundamental responsibility of agency managers and staff. Federal employees must ensure that government resources are used efficiently and effectively to achieve intended program results. Resources must be used consistent with agency mission, in compliance with law and regulation, and with minimal potential for waste, fraud, and mismanagement.

To support results-oriented management, the Government Performance and Results Act (GPRA, P.L. 103–62) requires agencies to develop strategic plans, set performance goals, and report annually on actual performance compared to goals. As the Federal government implements this legislation, these plans and goals should be integrated into (i) the budget process, (ii) the operational management of agencies and programs, and (iii) accountability reporting to the public on performance results, and on the integrity, efficiency, and effectiveness with which they are achieved.

Management accountability is the expectation that managers are responsible for the quality and timeliness of program performance, increasing productivity, controlling costs and mitigating adverse aspects of agency operations, and assuring that programs are managed with integrity and in compliance with applicable law.

Management controls—organization, policies, and procedures—are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA, referred to as the Integrity Act throughout this document).

Framework. The importance of management controls is addressed, both explicitly and implicitly, in many statutes and executive documents. The Federal Managers' Financial Integrity Act (P.L. 97–255) establishes specific requirements with regard to management controls. The agency head must establish controls that reasonably ensure that: (i) obligations and costs comply with applicable law; (ii) assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues and expenditures are properly recorded and accounted for. 31 U.S.C. 3512(c)(1). In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs. 31 U.S.C. 3512(d)(2).

The Act encompasses program, operational, and administrative areas as well as accounting and financial management.

Instead of considering controls as an isolated management tool, agencies should integrate their efforts to meet the requirements of the Integrity Act with other efforts to improve effectiveness and accountability. Thus, management controls should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. They should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

For instance, good management controls can assure that performance measures are complete and accurate. As another example, the management control standard of organization would align staff and authority with the program responsibilities to be carried out, improving both effectiveness and accountability. Similarly, accountability for resources could be improved by more closely aligning budget accounts with programs and charging them with all significant resources used to produce the program's outputs and outcomes.

Meeting the requirements of the Chief Financial Officers Act (P.L. 101–576, as amended) should help agencies both establish and evaluate management controls. The Act requires the preparation and audit of financial statements for 24 Federal agencies. 31 U.S.C. 901(b), 3515. In this process, auditors report on internal controls and

compliance with laws and regulations. Therefore, the agencies covered by the Act have a clear opportunity both to improve controls over their financial activities, and to evaluate the controls that are in place.

The Inspector General Act (P.L. 95–452, as amended) provides for independent reviews of agency programs and operations. Offices of Inspectors General (OIGs) and other external audit organizations frequently cite specific deficiencies in management controls and recommend opportunities for improvements. Agency managers, who are required by the Act to follow up on audit recommendations, should use these reviews to identify and correct problems resulting from inadequate, excessive, or poorly designed controls, and to build appropriate controls into new programs.

Federal managers must carefully consider the appropriate balance of controls in their programs and operations. Fulfilling requirements to eliminate regulations (''Elimination of One-Half of Executive Branch Internal Regulations,'' Executive Order 12861) should reinforce to agency managers that too many controls can result in inefficient and ineffective government, and therefore that they must ensure an appropriate balance between too many controls and too few controls. Managers should benefit from controls, not be encumbered by them.

Agency Implementation. Appropriate management controls should be integrated into each system established by agency management to direct and guide its operations. A separate management control process need not be instituted, particularly if its sole purpose is to satisfy the Integrity Act's reporting requirements.

Agencies need to plan for how the requirements of this Circular will be implemented. Developing a written strategy for internal agency use may help ensure that appropriate action is taken throughout the year to meet the objectives of the Integrity Act. The absence of such a strategy may itself be a serious management control deficiency.

Identifying and implementing the specific procedures necessary to ensure good management controls, and determining how to evaluate the effectiveness of those controls, is left to the discretion of the agency head. However, agencies should implement and evaluate controls without creating unnecessary processes, consistent with recommendations made by the National Performance Review.

The President's Management Council, composed of the major agencies' chief operating officers, has been established to foster governmentwide management changes (''Implementing Management Reform in the Executive Branch,'' October 1, 1993). Many agencies are establishing their own senior management council, often chaired by the agency's chief operating officer, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of management controls; recommending to the agency head which control deficiencies are sufficiently serious to report in the annual Integrity Act report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section III of this Circular.)

II. Establishing Management Controls

Definition of Management Controls. Management controls are the organization, policies, and procedures used by agencies to reasonably ensure that (i) programs achieve their intended results; (ii) resources are used consistent with agency mission; (iii) programs and resources are protected from waste, fraud, and mismanagement; (iv) laws and regulations are followed; and (v) reliable and timely information is obtained, maintained, reported and used for decision making.

Management controls, in the broadest sense, include the plan of organization, methods and procedures adopted by management to ensure that its goals are met. Management controls include processes for planning, organizing, directing, and controlling program operations. A subset of management controls are the internal controls used to assure that there is prevention or timely detection of unauthorized acquisition, use, or disposition of the entity's assets.

Developing Management Controls. As Federal employees develop and execute strategies for implementing or reengineering agency programs and operations, they should design management structures that help ensure accountability for results. As part of this process, agencies and individual Federal managers must take systematic and proactive measures to develop and implement appropriate, cost-effective management controls. The expertise of the agency CFO and IG can be valuable in developing appropriate controls.

Management controls guarantee neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but they are a means of managing the risk associated with Federal programs and operations. To help ensure that controls are appropriate and cost-effective, agencies should consider the extent and cost of controls relative to the importance and risk associated with a given program.

Standards. Agency managers shall incorporate basic management controls in the strategies, plans, guidance and procedures that govern their programs and operations. Controls shall be consistent with the following standards, which are drawn in large part from the ''Standards for Internal Control in the Federal Government,'' issued by the General Accounting Office (GAO).

General management control standards are:

- Compliance With Law. All program operations, obligations and costs must comply with applicable law and regulation. Resources should be efficiently and effectively allocated for duly authorized purposes.
- Reasonable Assurance and Safeguards. Management controls must provide reasonable assurance that assets are safeguarded against waste, loss, unauthorized use, and misappropriation. Management controls developed for agency programs should be logical, applicable, reasonably complete, and effective and efficient in accomplishing management objectives.
- Integrity, Competence, and Attitude. Managers and employees must have personal integrity and are obligated to support the ethics programs in their agencies. The spirit of the Standards of Ethical Conduct requires that they develop and implement effective management controls and maintain a level of competence that allows them to accomplish their assigned duties. Effective communication within and between offices should be encouraged.

Specific management control standards are:

- Delegation of Authority and Organization. Managers should ensure that appropriate authority, responsibility and accountability are defined and delegated to accomplish the mission of the organization, and that an appropriate organizational structure is established to effectively carry out program responsibilities. To the extent possible, controls and related decision-making authority should be in the hands of line managers and staff.
- Separation of Duties and Supervision. Key duties and responsibilities in authorizing, processing, recording, and reviewing official agency transactions should be separated among individuals. Managers should exercise appropriate oversight to ensure individuals do not exceed or abuse their assigned authorities.
- Access to and Accountability for Resources. Access to resources and records should be limited to authorized individuals, and accountability for the custody and use of resources should be assigned and maintained.
- Recording and Documentation. Transactions should be promptly recorded, properly classified and accounted for in order to prepare timely accounts and reliable financial and other reports. The documentation for transactions, management controls, and other significant events must be clear and readily available for examination.
- Resolution of Audit Findings and Other Deficiencies. Managers should promptly evaluate and determine proper actions in response to known deficiencies, reported audit and other findings, and related recommendations. Managers should complete, within established timeframes, all actions that correct or otherwise resolve the appropriate matters brought to management's attention.

Other policy documents may describe additional specific standards for particular functional or program activities. For example, OMB Circular No. A–127, ''Financial Management Systems,'' describes government-wide requirements for financial systems. The Federal Acquisition Regulations define requirements for agency procurement activities.

III. Assessing and Improving Management Controls

Agency managers should continuously monitor and improve the effectiveness of management controls associated with their programs. This continuous monitoring, and other periodic evaluations, should provide the basis for the agency head's annual

assessment of and report on management controls, as required by the Integrity Act. Agency management should determine the appropriate level of documentation needed to support this assessment.

Sources of Information. The agency head's assessment of management controls can be performed using a variety of information sources. Management has primary responsibility for monitoring and assessing controls, and should use other sources as a supplement to—not a replacement for—its own judgment. Sources of information include:

- Management knowledge gained from the daily operation of agency programs and systems.
- Management reviews conducted (i) expressly for the purpose of assessing management controls, or (ii) for other purposes with an assessment of management controls as a by-product of the review.
- IG and GAO reports, including audits, inspections, reviews, investigations, outcome of hotline complaints, or other products.
- Program evaluations.
- Audits of financial statements conducted pursuant to the Chief Financial Officers Act, as amended, including: information revealed in preparing the financial statements; the auditor's reports on the financial statements, internal controls, and compliance with laws and regulations; and any other materials prepared relating to the statements.
- Reviews of financial systems which consider whether the requirements of OMB Circular No. A–127 are being met.
- Reviews of systems and applications conducted pursuant to the Computer Security Act of 1987 (40 U.S.C. 759 note) and OMB Circular No. A–130, ''Management of Federal Information Resources.''
- Annual performance plans and reports pursuant to the Government Performance and Results Act.
- Reports and other information provided by the Congressional committees of jurisdiction.
- Other reviews or reports relating to agency operations, e.g. for the Department of Health and Human Services, quality control reviews of the Medicaid and Aid to Families with Dependent Children programs.

Use of a source of information should take into consideration whether the process included an evaluation of management controls. Agency management should avoid duplicating reviews which assess management controls, and should coordinate their efforts with other evaluations to the extent practicable.

If a Federal manager determines that there is insufficient information available upon which to base an assessment of management controls, then appropriate reviews should be conducted which will provide such a basis.

Identification of Deficiencies. Agency managers and employees should identify deficiencies in management controls from the sources of information described above. A deficiency should be reported if it is or should be of interest to the next level of management. Agency employees and managers generally report deficiencies to the next supervisory level, which allows the chain of command structure to determine the relative importance of each deficiency.

A deficiency that the agency head determines to be significant enough to be reported outside the agency (i.e. included in the annual Integrity Act report to the President and the Congress) shall be considered a ''material weakness.'' [1] This designation requires a judgment by agency managers as to the relative risk and significance of deficiencies. Agencies may wish to use a different term to describe less significant deficiencies, which are reported only internally in an agency. In identifying and assessing the relative importance of deficiencies, particular attention should be paid to the views of the agency's IG.

Agencies should carefully consider whether systemic problems exist that adversely affect management controls across organizational or program lines. The Chief Financial Officer, the Senior Procurement Executive, the Senior IRM Official, and the managers of other functional offices should be involved in identifying and ensuring correction of systemic deficiencies relating to their respective functions.

Agency managers and staff should be encouraged to identify and report deficiencies, as this reflects positively on the agency's commitment to recognizing and addressing management problems. Failing to report a known deficiency would reflect adversely on the agency.

Role of A Senior Management Council. Many agencies have found that a senior management council is a useful forum for assessing and monitoring deficiencies in management controls. The membership of such councils generally includes both line and staff management; consideration should be given to involving the IG. Such councils generally recommend to the agency head which deficiencies are deemed to be material to the agency as a whole, and should therefore be included in the annual Integrity Act report to the President and the Congress. (Such a council need not be exclusively devoted to management control issues.) This process will help identify deficiencies that although minor individually, may constitute a material weakness in the aggregate. Such a council may also be useful in determining when sufficient action has been taken to declare that a deficiency has been corrected.

IV. Correcting Management Control Deficiencies

Agency managers are responsible for taking timely and effective action to correct deficiencies identified by the variety of sources discussed in Section III. Correcting deficiencies is an integral part of management accountability and must be considered a priority by the agency.

The extent to which corrective actions are tracked by the agency should be commensurate with the severity of the deficiency. Corrective action plans should be developed for all material weaknesses, and progress against plans should be periodically assessed and reported to agency management. Management should track progress to ensure timely and effective results. For deficiencies that are not included in the Integrity Act report, corrective action plans should be developed and tracked internally at the appropriate level.

A determination that a deficiency has been corrected should be made only when sufficient corrective actions have been taken and the desired results achieved. This determination should be in writing, and along with other appropriate documentation, should be available for review by appropriate officials. (See also role of senior management council in Section III.)

As managers consider IG and GAO audit reports in identifying and correcting management control deficiencies, they must be mindful of the statutory requirements for audit followup included in the IG Act, as amended. Under this law, management has a responsibility to complete action, in a timely manner, on audit recommendations on which agreement with the IG has been reached. 5 U.S.C. Appendix 3. (Management must make a decision regarding IG audit recommendations within a six month period and implementation of management's decision should be completed within one year to the extent practicable.) Agency managers and the IG share responsibility for ensuring that IG Act requirements are met.

V. Reporting on Management Controls

Reporting Pursuant to Section 2. 31 U.S.C. 3512(d)(2) (commonly referred to as Section 2 of the Integrity Act) requires that annually by December 31, the head of each executive agency submit to the President and the Congress (i) a statement on whether there is reasonable assurance that the agency's controls are achieving their intended objectives; and (ii) a report on material weaknesses in the agency's controls. OMB may provide guidance on the composition of the annual report.

- *Statement of Assurance.* The statement on reasonable assurance represents the agency head's informed judgment as to the overall adequacy and effectiveness of management controls within the agency. The statement must take one of the following forms: statement of assurance; qualified statement of assurance, considering the exceptions explicitly noted; or statement of no assurance.

In deciding on the type of assurance to provide, the agency head should consider information from the sources described in Section III of this Circular, with input from senior program and administrative officials and the IG. The agency head must describe the analytical basis for the type of assurance being provided, and the extent to which agency activities were assessed. The statement of assurance must be signed by the agency head.

- *Report on Material Weaknesses.* The Integrity Act report must include agency plans to correct the material weaknesses and progress against those plans.

[1] This Circular's use of the term ''material weakness'' should not be confused with use of the same term by government auditors to identify management control weaknesses which, in their opinion, pose a risk or a threat to the internal control systems of an audited entity, such as a program or operation. Auditors are required to identify and report those types of weaknesses at any level of operation or organization, even if the management of the audited entity would not report the weaknesses outside the agency.

Reporting Pursuant to Section 4. 31 U.S.C. 3512(d)(2)(B) (commonly referred to as Section 4 of the Integrity Act) requires an annual statement on whether the agency's financial management systems conform with government-wide requirements. These financial systems requirements are presented in OMB Circular No. A–127, ''Financial Management Systems,'' section 7. If the agency does not conform with financial systems requirements, the statement must discuss the agency's plans for bringing its systems into compliance.

If the agency head judges a deficiency in financial management systems and/or operations to be material when weighed against other agency deficiencies, the issue must be included in the annual Integrity Act report in the same manner as other material weaknesses.

Distribution of Integrity Act Report. The assurance statements and information related to both Sections 2 and 4 should be provided in a single Integrity Act report. Copies of the report are to be transmitted to the President; the President of the Senate; the Speaker of the House of Representatives; the Director of OMB; and the Chairpersons and Ranking Members of the Senate Committee on Governmental Affairs, the House Committee on Government Reform and Oversight, and the relevant authorizing and appropriations committees and subcommittees. In addition, 10 copies of the report are to be provided to OMB's Office of Federal Financial Management, Management Integrity Branch. Agencies are also encouraged to make their reports available electronically.

Streamlined Reporting. The Government Management Reform Act (GMRA) of 1994 (P.L. 103–356) permits OMB for fiscal years 1995 through 1997 to consolidate or adjust the frequency and due dates of certain statutory financial management reports after consultation with the Congress. GMRA prompted the CFO Council to recommend to OMB a new approach towards financial management reporting which could help integrate management initiatives. This proposal is being pilot-tested by several agencies for FY 1995. Further information on the implications of this initiative for other agencies will be issued by OMB after the pilot reports have been evaluated. In the meantime, the reporting requirements outlined in this Circular remain valid except for those agencies identified as pilots by OMB.

Under the CFO Council approach, agencies would consolidate Integrity Act information with other performance-related reporting into a broader ''Accountability Report'' to be issued annually by the agency head. This report would be issued as soon as possible after the end of the fiscal year, but no later than March 31 for agencies producing audited financial statements and December 31 for all other agencies. The proposed ''Accountability Report'' would integrate the following information: the Integrity Act report, management's Report on Final Action as required by the IG Act, the CFOs Act Annual Report (including audited financial statements), Civil Monetary Penalty and Prompt Payment Act reports, and available information on agency performance compared to its stated goals and objectives, in preparation for implementation of the GPRA.

Government Corporations. Section 306 of the Chief Financial Officers Act established a reporting requirement related to management controls for corporations covered by the Government Corporation and Control Act. 31 U.S.C. 9106. These corporations must submit an annual management report to the Congress not later than 180 days after the end of the corporation's fiscal year.

This report must include, among other items, a statement on control systems by the head of the management of the corporation consistent with the requirements of the Integrity Act.

The corporation is required to provide the President, the Director of OMB, and the Comptroller General a copy of the management report when it is submitted to Congress.

[FR Doc. 95–15828 Filed 6–28–95; 8:45 am]

BILLING CODE 3110–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of revisions to an existing system of records.

SUMMARY: This document publishes notice of modifications to Privacy Act system of records USPS 070.040, Inquiries and Complaints—Customer Complaint Records. The modifications expand the system locations and purpose statements, make editorial revisions that change the name of the system, clarify the system as a result of the expansions, and correct organization name changes as a result of the restructuring of the Postal Service. The system locations and purpose statements are expanded to note the system's coverage of complaint and inquiry records from individuals, including employees, that indicate potential threats, a potentially volatile workplace climate, and/or significant personal concerns of employees or customers.

DATES: This proposal will become effective without further notice August 8, 1995, unless comments are received on or before that date that result in a contrary determination.

ADDRESSES: Written comments on this proposal should be mailed or delivered to Payroll Accounting/Records, United States Postal Service, 475 L'Enfant Plaza SW, Room 8650, Washington, DC 20260–5242. Copies of all written comments will be available for public inspection and photocopying between 8 a.m. and 4:45 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty E. Sheriff, (202) 268–2608.

SUPPLEMENTARY INFORMATION: System of records USPS 070.040 contains records relating to inquiries and complaints from postal customers and employees. Its current description is inaccurate in that it suggests that records in the system are limited to customer inquiries and complaints regarding mail service. In fact, the system has come to include inquiries and complaints of employees as well. This notice expands the purpose statement because some employee inquiries covered by the system pertain to issues other than mail service. These inquiries and complaints frequently relate to an employee's postal employment.

Occasionally a customer or employee complaint may indicate a potential for violence, a potentially volatile workplace climate, and/or significant personal concerns of employees or customers that should receive remedial attention. Because such inquiries and complaints may be referred to the Postal Service's Human Resources office or to its contractor for analysis and proactive attention, the Vice President of Human Resources has been added as a System Manager. Where the threat of violence is particularly strong, the correspondence may be referred to the Postal Inspection Service for investigative action. In those instances, related records may also become part of the Privacy Act system USPS 080.010, Inspection Requirements—Investigative File System. Other system changes clarify existing language, particularly with relation to the above-noted changes, and correct organization names that were changed as a result of a recent restructuring of the Postal Service.

All records within the system are kept in a secured environment, with automated data processing (ADP) physical and administrative security and technical software applied to information on computer media. Contractors who maintain information collected by this system are subject to subsection (m) of the Privacy Act and are required to apply appropriate protections subject to the audit and inspection of the Postal Inspection Service. Further, the only routine uses applied are those that the Postal Service has established and applied to most of its systems of records representing potential uses of information in the conduct of official business. These appear in the Postal Service's last compilation of its records systems,

published in the **Federal Register** on October 26, 1989 (54 FR 43652–43715).

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed system has been sent to Congress and to the Office of Management and Budget for their evaluation.

The most recent description of USPS 070.040 was published in the above-referenced compilation at 54 FR 43675. That description is modified as follows:

USPS 070.040

SYSTEM NAME:

[Change to read:]

Inquiries and Complaints—Customer and Employee Complaint Records, 070.040.

SYSTEM LOCATION(S):

[Change to read:]

Consumer Advocate and Human Resources, Postal Service Headquarters; districts; post offices; the Information Service Center at St. Louis, MO; and contractor sites.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

[Change to read:]

Postal Service customers and employees who have contacted the Postal Service with a suggestion or a problem.

CATEGORIES OF RECORDS IN THE SYSTEM:

[Change to read:]

Complaining individual's name and address; nature of the inquiry or complaint; assessment of concerns, findings, and recommendations; and resolution of same. Includes general correspondence and Consumer Service Cards about individuals' complaints/inquiries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 403, 404.

PURPOSE(S):

[Change to read:]

To process Postal Service customer and employee concerns and inquiries regarding mail services and other issues relating to the Postal Service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine use statements a, b, c, d, e, f, g, h, j, k, l, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

[Change to read:]

Typed, printed, handwritten or computer-printed form, microfilm, magnetic tape, and worm optical disk.

RETRIEVABILITY:

[Change to read:]

For correspondence and computerized complaint cards, by chronological sequence within subject category as derived from correspondence and the name of inquirer or complainant. Human Resources' records may also be retrieved by work location. For hard copy complaint cards, chronological by retrieval code and preprinted complaint card serial number.

SAFEGUARDS:

[Change to read:]

These are restricted files and are to be maintained in locked file cabinets in secured facilities, with access limited to personnel having an official need. Automated records are protected through computer password security.

RETENTION AND DISPOSAL:

[Change to read:]

Records of referrals to Human Resources: Destroy 3 years after resolution of problem.

Other inquiry/complaint records: Destroy 1 year after resolution of problem.

SYSTEM MANAGER(S) AND ADDRESS:

[Change to read:]

Vice President, Human Resources, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–4200

Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza SW, Washington DC 20260–2200

NOTIFICATION PROCEDURE:

Customers wanting to know whether information about them is maintained in this system of records must address inquiries to the same facility to which they submitted their complaint. Inquiries about complaint cards must contain the date and card serial number.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the notification procedure above and the Postal Service Privacy Act regulations regarding access to records and verification of identity under 39 CFR 266.6.

CONTESTING RECORD PROCEDURES:

See Notification Procedure and Record Access Procedures above.

RECORD SOURCE CATEGORIES:

[Change to read:]

Postal Service customers and employees.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

[Change to read:]

Records or information in this system that have been compiled in reasonable anticipation of a civil action or proceeding are exempt from individual access under 5 U.S.C. 552a(d)(5). In addition, the Postal Service has claimed exemptions from certain provisions of the Act for several of its other systems of records as permitted by 5 U.S.C. 552a(j) and (k). See 39 CFR 266.9. To the extent that copies of exempt records from those other systems are incorporated into this system, the exemptions applicable to the original primary system must continue to apply to the incorporated records.''

Neva R. Watson,

Acting Chief Counsel, Legislative.

[FR Doc. 95– 15981 Filed 6–28 –95; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Supplemental Information on Accident and Insurance.

(2) *Form(s) submitted:* SI–1c, SI–5, ID–30q, ID–3s, ID–3u, ID–30k, ID–30k–1.

(3) *OMB Number:* 3220–0036.

(4) *Expiration date of current OMB clearance:* June 30, 1996.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 33,550.

(8) *Total annual responses:* 33,500.

(9) *Total annual reporting hours:* 1,987.

(10) *Collection description:* The RUIA provides for recovery of sickness benefits paid if the employee receives a settlement for the same injury for which benefits were paid. The collection obtains identifying information about the person or company responsible for such payments and

information needed for determining the amount of the RRB's entitlement.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–16022 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Employee's Certification
(2) *Form(s) submitted:* G–346
(3) *OMB Number:* 3220–0140
(4) *Expiration date of current OMB clearance:* October 31, 1995
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* Individuals or households
(7) *Estimated annual number of respondents:* 18,000
(8) *Total annual responses:* 18,000
(9) *Total annual reporting hours:* 1,500
(10) *Collection description:* Under Section 2 of the Railroad Retirement Act, spouses of retired railroad employees may be entitled to an annuity. The collection obtains information from the employee about the employee's previous marriages, if any, to determine if any impediment exists to the marriage between the employee and his or her spouse.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–16023 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Report of Medicaid State Office on Beneficiary's Buy-in Status
(2) *Form(s) submitted:* RL–380–F
(3) *OMB Number:* 3220–0185
(4) *Expiration date of current OMB clearance:* September 30, 1995
(5) *Type of request:* Extension of a currently approved collection
(6) *Respondents:* State, Local or Tribal Government
(7) *Estimated annual number of respondents:* 600
(8) *Total annual responses:* 600
(9) *Total annual reporting hours:* 100
(10) *Collection description:* Under the Railroad Retirement Act, the Railroad Retirement Board administers the Medicare program for persons covered by the railroad retirement system. The collection obtains information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a State buy-in agreement in States in which they reside.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 95–15919 Filed 6–28–95; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35886; File No. SR–Amex–95–20]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Indexed Term Notes

June 23, 1995.

On May 30, 1995, the American Stock Exchange, Inc. (''Amex'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade indexed term notes (''Notes''), the return on which is based in whole or in part on changes in the value of twenty-four (24) equity securities of companies that have been identified by the Note underwriter, The Bear Stearns Companies (''Bear Stearns''), as ''consolidation candidates.'' Notice of the proposal appeared in the **Federal Register** on June 9, 1995.[3] No comment letters were received on the proposal. The Exchange filed Amendment No. 1 to the proposed rule change on June 12, 1995,[4] and Amendment No. 2 on June 20, 1995.[5] This order approves the Amex proposal, as amended.

Under Section 107 of the Amex Company Guide (''Guide''), the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1994).

[3] *See* Securities Exchange Act Release No. 35802 (June 2, 1995), 60 FR 30614.

[4] In Amendment No. 1, the Exchange amended the proposal to provide that at maturity, (1) holders of the Notes will participate in 90% of the percentage change between the ''original portfolio value'' and the ''average portfolio value''; and (2) the average portfolio value will be determined by reference to the average of the monthly closing Index values over the term of the Notes. *See* Letter from William Floyd-Jones, Jr., Assistant General Counsel, Legal & Regulatory Policy Division, Amex, to Michael Walinskas, Branch Chief, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated June 8, 1995 (''Amendment No. 1'').

[5] In Amendment No. 2, as described below, the Exchange clarifies the Exchange rules that will govern the trading of the Notes. *See* Letter from Michael Bickford, Vice President, Capital Markets Group, Amex, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated June 20, 1995 (''Amendment No. 2'').

stocks, bonds, debentures, or warrants.[6] The Amex now proposes to list for trading, under Section 107A of the Guide, Notes whose value is based in whole or in part on changes in the value of twenty-four (24) equity securities of companies that have been identified by the Note underwriter as ''consolidation candidates'' (''Index'').[7]

The Notes are non-convertible debt securities of Bear Stearns, and will conform to the listing guidelines under Section 107A of the Guide.[8] The Notes will have a term of three years from the date of issue. The Notes provide for a single payment at maturity, and will bear no periodic payments of interest. At maturity, the Notes will entitle the holder to receive an amount based upon ninety percent (90%) of the percentage change between the ''original portfolio value'' [9] and the ''average portfolio value'',[10] provided, however that the amount payable at maturity will not be less than 90% of the principal amount of the Notes. Thus, while there is no cap on the appreciation, investors participate in only 90% of the appreciation, as calculated above.[11] The Notes are cash-settled in that they do not give the holder any right to receive an Index security or any other ownership right or interest in the securities comprising the Index, although the return on the investment is based on the aggregate value of the Index.

According to the Amex, the Notes will allow investors to combine the protection of a portion of the principal amount of the Notes with a potential additional payment based upon the performance of an Index of 24 equity secuities of ''consolidation candidates''. In particular, the proposed Notes will provide 90% principal protection with the opportunity to participate in 90% of any appreciation of the underlying Index, as calculated above.

The Index consists of 24 securities that satisfy the following criteria: (1) A minimum market capitalization per component of $75 million, except that up to 10% of the number of component securities in the Index may have individual market capitalizations of not less than $50 million; (2) trading volume per Index component in each of the six months prior to the offering of the Notes of not less than one million shares, except that up to 10% of the number of Index component securities may have a trading volume in each of the six months prior to the offering of not less than 500,000; (3) at least 90% of the number of components in the Index will satisfy the then current criteria for standardized options trading set forth in Exchange Rule 915; (4) all components of the Index will be listed on the Amex or the New York Stock Exchange, or will be National Market securities traded through Nasdaq; and (5) all components of the Index will be subject to last sale reporting pursuant to Rule 11Aa3–1 of the Act.

At the outset, each of the securities in the Index will have equal representation. Specifically, each security included in the Index will be assigned a multiplier on the date of issuance of the Notes so that each component represents an equal percentage of the value of the Index on the date of issuance. The multiplier indicates the number of shares of a security, rounded to the nearest whole share, given its market price on an exchange or through Nasdaq, to be included in the calculation of the Index. Accordingly, each of the 24 companies included in the Index will represent approximately 4.17 percent of the weight of the Index at the time of issuance of the Notes. The Index divisor will initially be set to provide a benchmark value of 100.00 at the close of trading on the day preceding the issuance of the Notes.

The number of shares of each component stock in the Index will remain fixed except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component securities. The number of shares of each component security may also be adjusted, if necessary, in the event of a merger, consolidation, dissolution, or liquidation of an issuer, or in certain other events such as the distribution of property by an issuer to shareholders. Shares of a component security may be replaced (or supplemented) with other securities under certain circumstances, such as the conversion of a component stock into another class of security, or the spin-off of a subsidiary. If the security remains in the Index, the number of shares of that security will be adjusted, if necessary, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the corporate action.[12] In all cases, the divisor will be adjusted, if necessary, to ensure continuity of the value of the Index. In the event that a security in the Index is canceled due to a corporate consolidation and the holders of such security receive cash, the cash value of such securities will be included in the Index and will accrue interest at LIBOR to term, compounded daily.

The value of the Index will be calculated continuously by the Amex and will be disseminated every 15 seconds over the Consolidated Tape Association's Network B. The Index value will equal the sum of the products of the most recently available market prices and the applicable multipliers for the securities in the Index.

The Notes may not be redeemed prior to maturity and are not callable by the issuer. Holders of Index Notes will be able to cash-out of their investment only by selling the Notes on the Amex. The Exchange anticipates that the trading value of the Notes in this secondary trading market will depend in large part on the value of the securities compromising the Index and also on such other factors as the level of interest rates, the volatility of the value of the

[6] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[7] The components of the Index are: Agouron Pharmaceuticals, Inc; Biogen, Inc.; Campbell Soup Co.; Crestar Financial Corp.; Electronic Arts, Inc.; Heinz (H.J.) Co.; Healthcare COMPARE Corp.; Integra Financial Corp.; McCormick & Co., Inc.; Mercantile Bancorporation; Mesa, Inc.; Midlantic Corp., Inc.; The Money Store, Inc.; Multicare Companies, Inc.; Oryx Energy Co.; Physician Corp. of America; Protein Design Labs, Inc.; Quaker Oats Co.; Santa Fe Energy Resources; Sierra Health Services, Inc.; Triton Energy Corp.; United Companies Financial Corp.; Upjohn Co.; and Vertex Pharmaceuticals, Inc.

[8] Specifically, the Notes must have: (1) A minimum public distribution of one million trading units; (2) a minimum of 400 holders; (3) an aggregate market value of at least $4 million; and (4) a term of at least one year. Additionally, the issuer of the Notes must have assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. As an alternative to these financial criteria, the issuer may have either: (1) assets in excess of $200 million and stockholders' equity in excess of $10 million; or (2) assets in excess of $100 million and stockholders' equity in excess of $20 million.

[9] The ''original portfolio value'' is the closing level of the Index at the time that the Notes are priced immediately preceding the issuance of the Notes.

[10] The ''average portfolio value'' is the average of the closing values of the Index on the last trading day of each of the 36 months during the term of the Notes. *See* Amendment No. 1, *supra* note 4.

[11] The Commission notes that because the average portfolio value is based on an average of closing Index values over the term of the Notes, the percentage change between the ''original portfolio value'' and the ''average portfolio value'' may be significantly different than the percentage change in the value of the Index between the date that the Notes are issued and the maturity date for the Notes.

[12] Telephone conference between Michael Bickford, Vice President, Capital Markets Group, Amex, and Brad Ritter, Senior Counsel, OMS, Division, Commission, on June 20, 1995 (''June 20 Conversation''). The issuer will not attempt to find a replacement stock or compensate for the extinction of a security due to bankruptcy or a similar event.

Index, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer, Bear Stearns.[13]

Because Index Notes are linked to an index of equity securities, the Amex's existing equity floor trading rules will apply to the trading of Index Notes.[14] First, pursuant to Amex Rule 411, the exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading Index Notes.[15] Second, consistent with Amex Rule 411, the Exchange will further require that a member or member firm specifically approve a customer's account for trading Index Notes prior to, or promptly after, the completion of the transaction.[16] Third, Index Notes will be subject to the equity margin rules of the Exchange.[17] Fourth, the Exchange will, prior to trading Index Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in Index Notes and highlighting the special risks and characteristics of the Index Notes.[18]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[19] Specifically, the Commission believes that providing for exchange-trading of the Notes will offer a new and innovative means of participating in the market for securities identified by the issuer of the Notes as consolidation candidates.[20] In particular, the Commission believes that the Notes will permit investors to gain equity exposure in such companies, while at the same time, limiting the downside risk of their original investment. For the reasons discussed in the Indexed Term Note Approval Orders, the Commission finds that the listing and trading of the Notes is consistent with the Act.[21]

As with the other indexed term notes approved for listing by the Exchange, the Notes are not leveraged instruments. Their price, however, will still be derived and based upon the underlying linked securities. Accordingly, the level of risk involved in the purchase or sale of Index Notes is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, the Commission has several specific concerns with this type of products because the final rate or return of the Notes is derivatively priced, based on the performance of the underlying securities. The concerns include: (1) Investor protection concerns, (2) dependence on the credit of the issuer of the security, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked securities.[22] The Commission believes the Amex has adequately addressed each of these issues such that the Commission's regulatory concerns are adequately minimized.[23] In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the Amex has adequately addressed the potential public customer concerns that could arise from the hybrid nature of the Notes.[24] Moreover, the Commission believes that the Exchange's existing surveillance procedures are adequate to detect and deter any attempts at manipulation of the Notes and the securities in the Index.

Further, the Commission believes that the listing standards and issuance restrictions discussed above, particularly, the objective standards for market capitalization, trading volume, and options eligibility, will ensure that at the time that the Notes are issued, the Index will be composed of highly capitalized, liquid securities. As a result, the Commission believes that any concerns regarding the potential for manipulation of the Index or adverse market impact on the securities comprising the Index are adequately minimized.

The Commission realizes that Index Notes are dependent upon the individual credit of the issuer, Bear Stearns. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Guide which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as Index Notes.[25] In addition, the Exchange's hybrid listing standards further require that Index Notes have at least $4 million in market value.[26] In any event, financial information regarding Bear Stearns, in addition to the information on the issuers of the securities comprising the Index, will be publicly available.[27]

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Specifically, the proposal, as amended, is substantively similar to other indexed term notes that the Commission has approved for listing by the Amex.[28] To the Commission's knowledge, these other issues of notes have traded on the Amex without any material problems occurring.[29] The only substantive differences between these Notes and those previously approved are the composition of the index of securities on which the values of the Notes will be based, the method for calculating the value to be received by holders upon maturity of the Notes, and the amount of participation by investors in the appreciation of the Index during the term of the Notes. With regard to the composition of the Index, as discussed above, the Commission believes that the objective eligibility standards for including a particular security in the Index minimize the potential for manipulation of the Notes and any possible adverse market impact on the securities contained in the Index.

The Commission also believes that the proposed method for calculating the amount to be paid to holders at maturity does not raise any significant regulatory concerns. The formula used here involves the averaging of 36 monthly

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[13] *See* Amendment No. 2, *supra* note 5.

[14] *Id.*

[15] *Id.* Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[16] *See* Amendment No. 2, *supra* note 5.

[17] *Id.*

[18] *Id.* The Commission notes that the circular should also highlight the formula for calculating the payment to holders at maturity as well as the participation rate in the appreciation of the Index, as described above.

[19] 15 U.S.C. 78f(b)(2) (1988).

[20] The Commission notes that the Index Notes are very similar in structure to other indexed term notes recently approved by the Commission for listing on the Amex. *See* Securities Exchange Act Release Nos. 34820 (October 11, 1994), 59 FR 52571 (October 18, 1994) (approval for listing of indexed term notes linked to a portfolio of ''basic'' industry securities), 34723 (September 27, 1994), 59 FR 50631 (October 4, 1994) (approval for listing of indexed term notes linked to a portfolio of banking industry securities), and 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994) (approval for listing of Telecommunications Basket Stock Upside Note Securities) (collectively, Indexed Term Note Approval Orders'').

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] The Exchange will also distribute a circular to its membership calling attention to the specific risks associated with the Notes. *See supra* note 18.

[25] *See supra* note 8.

[26] *See* Amex Company Guide § 107A.

[27] The companies that comprise the Index are reporting companies under the Act.

[28] *See* Indexed Term Note Approval Orders, *supra* note 20.

[29] *See* June 20 Conversation, *supra* note 12.

closing Index values over a three year period. Accordingly, the Commission believes that this calculation method reduces the potential for manipulation. Moreover, as noted above, the Amex has adequate surveillance procedures in place to detect and deter attempts at manipulation involving either the Notes or the securities contained in the Index. Similarly, the Commission also believes that limiting investors' participation in the appreciation of the Index does not raise any regulatory concerns. The Commission has previously approved equity linked products where investors only receive a percentage of the appreciation of the linked securities.[30] As a result, the Commission believes that these aspects of the Notes are consistent with the Act so long as they are adequately disclosed to investors by the issuer and described in the circular to be issued by the Exchange upon issuance of the Notes. Finally, the Commission has not received any comment to date on the proposal and has not received any comment on similarly structured notes previously approved.[31]

Based on the above, the Commission believes that the proposed rule change is consistent with Section 6(b)(5) of the Act and finds good cause for approving the proposal and Amendment Nos. 1 and 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex–95–20 and should be submitted by July 20, 1995.

It therefore is ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR-Amex–95–20), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16054 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[30] *See* Securities Exchange Act Release No. 32950 (September 23, 1993), 58 FR 50985 (September 29, 1993) (approval for the listing of debt exchangeable for common stock (''DECS'') by the New York Stock Exchange).

[31] *See* Indexed Term Note Approval Orders, *supra* note 20.

[32] 15 U.S.C. 78s(b)(2) (1988).

[33] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–21161; 812–9538]

ASA Limited; Notice of Application

June 23, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under section 7(d) of the Investment Company Act of 1940 (the ''Act'').

APPLICANT: ASA Limited.

RELEVANT ACT SECTIONS: Order requested under section 7(d) of the Act.

SUMMARY OF APPLICATION: Applicant, a South African company registered as an investment company in the United States, requests an order to allow applicant to appoint Chase Manhattan Bank, N.A. (''Chase'') as its custodian and to authorize Chase to appoint Standard Bank of South Africa Limited (''Standard Bank'') as applicant's subcustodian. The order would supersede prior orders issued under section 7(d) with respect to applicant's custodial arrangements.

FILING DATE: The application was filed on March 16, 1995 and amended on June 9, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 36 Wierda Road West, Sandton 2196, South Africa.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Senior Attorney, at (202) 942–0571, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

A. Background

1. ASA Limited (formerly known as American-South African Investment Company, Ltd) is a South African company and a closed-end, non-diversified management investment company. On August 13, 1958, the SEC issued an order (the ''Original Order'') under section 7(d) of the Act allowing applicant to register as an investment company under the Act and to make a public offering of its securities in the United States.[1] Applicant's custodian is Citibank, N.A. (''Citibank'').

2. The Original Order was issued subject to several conditions, including several restrictions imposed on applicant concerning the custody of its assets and the consummation of its portfolio transactions. The Original Order required applicant to, among other things, keep all of its assets, except for $75,000 in cash to cover administrative expenses, in the custody of a bank in the United States. The $75,000 was kept in a non-interest bearing checking account with a South African bank. The Original Order also required applicant to settle all purchases and sales of portfolio securities, other than those executed on certain established stock exchanges, in the United States. As a condition to the relief, applicant agreed not to change its undertakings and agreements contained in the original application, including its custodian agreement with Citibank, without SEC approval. Since the Original Order, applicant has received several orders modifying the restrictions on its custodial arrangements.

3. In 1959, the SEC issued an order allowing applicant to consummate in South Africa purchases and sales of South African Treasury Bills from and to the South African Treasury or the

[1] Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958) (order).

South African Reserve Bank.[2] That same year, the SEC issued an order allowing applicant to purchase securities in South Africa upon the exercise of rights issued to it as a shareholder of other companies, provided certain conditions were met.[3]

4. In 1981, the SEC issued an order allowing applicant to invest its cash held in U.S. dollars in time deposits and bank certificates of deposits.[4]

5. In 1985, the SEC issued an order (the ''1985 Order'') allowing applicant to purchase portfolio securities issued by non-South African companies listed on certain foreign stock exchanges and to allow applicant's custodian to settle such transactions in the country where the relevant exchange was located. In the event that removal of these securities becomes prohibited by law or regulation or financially impracticable, the 1985 Order allows applicant's custodian to appoint an ''eligible foreign custodian'' as that term is defined by rule 17f–5 or an overseas branch of the custodian, to hold these securities in the country where the relevant exchange was located, provided certain conditions were met. The 1985 Order also allowed applicant to maintain in South Africa up to 3% of its assets in short-term rand denominated investments issued or guaranteed by the Republic of South Africa and to authorize its custodian to appoint Barclay's National Bank Limited as applicant's subcustodian in South Africa to hold these investments, subject to compliance with rule 17f–5.

6. In 1991, the SEC issued an order to allow applicant to, among other things, increase from $75,000 to $200,000 the amount of cash applicant may hold outside of the custody of its United States custodian and to invest up to 5% of its assets in rand-denominated interest bearing bank accounts with eligible foreign custodians or overseas branches of qualified U.S. banks located in South Africa, provided applicant complies with rule 17f–5. (These orders modifying the Original Order are referred to as the ''Subsequent Orders'').

7. Citibank plans to relocate its global custody services to London, England and has informed applicant that it will no longer be able to serve as applicant's custodian as of July 1, 1995. In view of the termination of these custody arrangements, applicant seeks to appoint Chase as its new custodian. On February 3, 1995, applicant's board of directors approved the appointment of Chase, authorized applicant's officers to file the application, and complete the new custodial arrangements upon obtaining SEC approval. Citibank has agreed to remain applicant's custodian for a limited period after July 1, 1995 pending SEC approval of applicant's new custody arrangements.

B. Relief Requested

1. Applicant requests an order to permit it to enter into a new custody arrangement with Chase and to permit Chase to appoint Standard Bank as applicant's South African subcustodian, subject to compliance with rule 17f–5.

2. Applicant states that it is not requested a change in any of the material aspects of its existing custody arrangements under the Original Order as amended by the Subsequent Orders. Applicant, however, intends that any order granting the relief requested in the application supersede the Original and Subsequent Orders with respect to applicant's custodial arrangements. Therefore, applicant reaffirms in the application its prior representations, undertakings and agreements in the Original and Subsequent Orders with respect to its custodial arrangements.

3. Applicant will settle its purchases and sales of portfolio securities in the United States by use of the mails or means of interstate commerce, except for:

(a) Purchases and sales on an ''Established Securities Exchange,'' defined as a national securities exchange as defined in section 2(a)(26) of the Act, London Stock Exchange, the Johannesburg Stock Exchange, the Stock Exchange of Melbourne, Ltd., the Toronto Stock Exchange, the Tokyo Stock Exchange, and Effektenborsenverein Zurich Exchange;

(b) Purchase and sales in South Africa of South African Treasury Bills from and to the South African Treasury or the South African Reserve Bank; and

(c) Purchases in South Africa of securities upon the exercise of rights issued to applicant as shareholder of other companies for the purchase of such securities, provided that (i) the rights so exercised are offered to applicant as a shareholder in another company on the same basis as all other holders of the class or classes of shares of such other company to whom such rights are offered, (ii) the rights exercised do not exceed 10% of the total amount of the rights offered, and (iii) the securities purchased pursuant to the exercise, or securities of the same class, are listed on the Johannesburg Stock Exchange, or application has been made to such exchange for the listing thereon of the securities, or it has been publicly announced that application will be made to such exchange for the listing thereon of the securities, and applicant has no reason to believe that the listing will not be effected.

4. Applicant will keep all of its assets (which may include U.S. dollars invested in time deposits and bank certificates of deposit) in the custody of a United States custodian, except:

(a) $200,000 in cash maintained in an account with an eligible foreign custodian or an overseas branch of a qualified U.S. bank located in South Africa for the purpose of meeting its administrative expenses;

(b) Up to 3% of applicant's assets in short-term rand denominated investments issued or guaranteed by the Republic of South Africa;

(c) Up to 5% of applicant's assets in rand-denominated interest-bearing accounts with eligible foreign custodians or overseas branches of qualified U.S. banks located in South Africa;

(d) If removal of securities purchased on an Established Securities Exchange in Japan, Australia, Switzerland, and Canada becomes either prohibited by law or regulation or financially impracticable, up to 5% of applicant's assets may be held by an eligible foreign custodian or an overseas branch of Chase in each of these countries.

5. Applicant will comply with rule 17f–5 as if it were a registered management investment company organized or incorporated in the United States with respect to any of its assets held by eligible foreign custodians (including Standard Bank) or overseas branches of qualified U.S. banks (including Chase), outside the United States.

6. Applicant represents that Chase and any future custodian will enter into an agreement to comply with ASA's Memorandum and Articles of Association, the provisions of the Act and the rules thereunder, each of the undertakings and agreements contained in the original application and the terms of the Original Order and any other application or order of the SEC relating to applicant's custodial arrangements, as each of the same may from time to time be amended, and to do nothing inconsistent with applicant's undertakings and agreements contained in the original application or required by any present or future rule under the Act.

7. The custodian agreements will insure to the benefit of applicant's

[2] Investment Company Act Release Nos. 2817 (Jan. 5, 1959) (notice) and 2821 (Jan. 20, 1959) (order).

[3] Investment Company Act Release Nos. 2883 (May 22, 1959) (notice) and 2886 (June 9, 1959) (order).

[4] Investment Company Act Release Nos. 11669 (Mar. 6, 1981) (notice) and 11722 (Apr. 7, 1981) (order).

shareholders as parties and beneficiaries so as to enable them to maintain actions at law or in equity within the United States and South Africa. Applicant's custodian also will maintain a list of affiliated persons of applicant, its officers, directors, and investment adviser, and will not consummate any otherwise prohibited transaction with such person unless specifically permitted by SEC order. In addition, applicant will perform every action necessary to cause and assist the custodian of its assets to distribute the assets, or proceeds thereof, if the SEC or a court of competent jurisdiction shall have directed so by final order.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16052 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21163; 811–6037]

GOC Fund, Inc.; Notice of Application

June 23, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: GOC Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 23, 1995 and amended on June 19, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 18, 1995, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 19 Old Kings Highway South, Darien, CT 06820–4526.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Senior Attorney, at (202) 942–0579, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, formerly known as The Manager's Fund, Inc., is an open-end diversified management investment company that was organized as a corporation under the laws of the State of Maryland. On February 2, 1990, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on March 28, 1990, and the initial public offering commenced on that date.

2. On October 12, 1994, applicant's board of directors approved the liquidation of applicant. The directors determined that the liquidation was in the best interest of securityholders because of applicant's inability to achieve its goals, especially the failure to market its shares to a different class of investors from the existing market for applicant's related funds. In addition, all remaining securityholders had holdings below applicant's minimum amount because all were participants in a reinvestment option offered to unitholders of certain unit investment trusts and the minimum investment amount had been waived for each of such participants.

3. On October 19, 1994, a notice of redemption (''Notice'') was sent to all remaining securityholders. Because all remaining securityholders had holdings below the minimum amount established by applicant's articles of incorporation, and in accordance with Maryland law, each securityholder received a final distribution representing the net asset value of its shares along with the Notice.

4. On October 18, 1994, applicant had 132,873 shares outstanding, having an aggregate net asset value of $132,873 and a per share net asset value of $1.00.

5. The expenses incurred in connection with the liquidation consists primarily of administrative, legal, and accounting fees, and mailing and telephone expenses. Gabelli-O'Connor Fixed Income Mutual Funds Management Company, applicant's investment adviser, agreed to assume all known and unknown unpaid liabilities of applicant, which are less than $5,000. In addition, the investment adviser assumed the unamortized organizational expenses of applicant, in the amount of $5,122.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant intends to file articles of dissolution with the State of Maryland.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16053 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26318]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 23, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 17, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended,

may be granted and/or permitted to become effective.

The Columbia Gas System, Inc. (70–8627)

The Columbia Gas System, Inc. (''Columbia''), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, has filed an application-declaration under sections 6, 7, 9, 10, 11(f), 11(g), 12(b), 12(c) and 12(e) of the Act and rules 42, 43, 45, 62 and 65 thereunder. The application-declaration includes (i) an amended plan of reorganization and disclosure statement for Columbia (the ''Columbia Plan'' and ''Columbia Disclosure Statement,'' respectively) and (ii) an amended plan of reorganization and disclosure statement for Columbia Gas Transmission Corporation (''Columbia Transmission''), a wholly-owned nonutility subsidiary of Columbia (the ''TCO Plan'' and ''TCO Disclosure Statement,'' respectively).[1] The Plans and their respective disclosure statements were filed on June 14, 1995 with the United States Bankruptcy Court for the District of Delaware (''Bankruptcy Court'') pursuant to the provisions of Chapter 11 of the United States Bankruptcy Code (''Bankruptcy Code'').

Columbia proposes that the Commission issue (i) an order pursuant to section 11(f) of the Act approving the Columbia Plan and certain related transactions under the TCO Plan [2] and (ii) a report on the Columbia Plan pursuant to section 11(g) that may accompany a solicitation of creditors and any other interest holders for approval of the Columbia Plan in Columbia's bankruptcy proceedings.[3]

Columbia and Columbia Transmission filed voluntary petitions in the Bankruptcy Court for protection under Chapter 11 of the Bankruptcy Code on July 31, 1991 (''Petition Date''). Since that time, the Debtors have continued to manage their respective businesses and to possess their respective properties as debtors-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Commission has filed a notice of appearance under section 1109 of the Bankruptcy Code in each Debtor's bankruptcy proceeding. Except for the appointment of a fee examiner to review the reasonableness of fees and expenses incurred by certain professionals involved in each of the Debtors' cases, no trustee or examiner has been appointed by the Bankruptcy Court.

Columbia seeks to retain ownership of Columbia Transmission as a wholly-owned subsidiary, to recapitalize Columbia Transmission and to fund payments to Columbia Transmission's creditors pursuant to the provisions of the TCO Plan. The Debtors contemplate concurrent implementation of the Columbia Plan and the TCO Plan.

Certain transactions contemplated by the Columbia Plan and Columbia's sponsorship of the TCO Plan require Commission authorization. The proposed issuance by Columbia Transmission of securities pursuant to the TCO Plan, however, is exempt from the Act under rule 49(c). The jurisdictional aspects of the Plans are summarized below.

I. The Columbia Plan

A. Overview

As described in the Columbia Disclosure Statement, the Columbia Plan is intended to provide for payment of substantially all liquidated allowed claims of Columbia's creditors on the Plan's effective date (''Effective Date'').[4] Holders of claims for borrowed money generally will receive a combination of (i) cash, to the extent available (as determined by Columbia), (ii) new debentures of Columbia (''New Indenture Securities''), to be issued under a new form of indenture (the ''New Indenture''), and (iii) equity securities of Columbia. The equity securities proposed under the Columbia Plan will be preferred stock (''Preferred Stock'') and Dividend Enhanced Convertible Stock (''DECS''). Under certain circumstances provided in the Columbia Plan, Columbia may redeem the Preferred Stock and DECS for cash.

Under the Columbia Plan, Columbia proposes to issue up to an aggregate of $3.65 billion in new securities, consisting of up to $3.25 billion in debt and up to $400 million in equity. With respect to the debt, Columbia requests authority to issue up to $3 billion of New Indenture Securities, but contemplates issuing up to $2.1 billion of New Indenture Securities and entering into bank credit facilities (''Bank Facilities'') aggregating up to $1.15 billion. Columbia also proposes that if cash available from the Bank Facilities or operations is reduced from currently projected levels, the principal amount of New Indenture Securities to be issued pursuant to the Columbia Plan would be proportionately increased, provided that the aggregate of the debt to be issued thereunder would not exceed $3.25 billion. With respect to equity, Columbia proposes to issue up to $200 million in aggregate value each of the Preferred Stock and DECS.

Columbia also proposes to repurchase and possibly reissue common stock of Columbia (''Common Stock'') in connection with the termination of the leveraged employee stock ownership feature (the ''LESOP'') of the Employees' Thrift Plan of Columbia Gas System (''Thrift Plan''). Further, if allowed claims of certain Columbia Transmission creditors exceed the values estimated under the TCO Plan, Columbia proposes to issue Common Stock to fund distributions pursuant to the TCO Plan. In addition, the Columbia Plan gives Columbia the flexibility to, under certain conditions, offer Common Stock with respect to claims relating to litigation against Columbia, certain of its current and former directors and officers, and other non-debtor defendants currently pending before the United States District Court for the District of Delaware (the ''Securities Action'').

Finally, holders of the Common Stock (''Stockholders'') will retain their equity interests in Columbia pursuant to the Columbia Plan and are asked to approve certain amendments to Columbia's certificate of incorporation.

B. New Indenture Securities

The New Indenture Securities will be general, unsecured senior obligations of Columbia. They will be issued in seven series with maturities of approximately five, seven, ten, twelve, fifteen, twenty and thirty years, respectively. Each New Indenture Security will bear interest from the Effective Date (or from the most recent interest payment date to which interest has been paid), which will be payable semi-annually. The interest rates for each series of new Indenture Securities will be based on market rates for comparable securities. It is expected that the interest rate on any series of New Indenture Securities will

[1] The Columbia Plan and the TCO Plan are collectively referred to herein as the ''Plans.'' Columbia and Columbia Transmission are sometimes collectively referred to herein as the ''Debtors.''

[2] Section 11(f) provides, in relevant part, that ''a reorganization plan for a registered holding company . . . shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the Court.''

[3] Section 11(g)(2) of the Act provides, in relevant part, that any solicitation for consents to our authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be ''accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission.''

[4] Both the Columbia Plan and the TCO Plan assume that the Effective Date will occur by December 31, 1995 for purposes of financial projections. The Plans allow for the Effective Date to occur as late as June 28, 1996.

not exceed 10 percent per annum. The principal amounts of each series of New Indenture Securities will be payable on their respective maturity dates. Certain series of New Indenture Securities may be redeemable at a premium at the option of Columbia.

The application-declaration states that the proposed New Indenture, pursuant to which the New Indenture Securities will be issued, will contain customary affirmative covenants and limitations consistent with market practice for similarly rated companies. The New Indenture also contains limitations on the ability of Columbia's significant subsidiaries to incur long-term debt with or issue preferred stock to third parties and a negative pledge with respect to Columbia, subject to specified exceptions.

C. Preferred Stock

The Preferred Stock proposed under the Columbia Plan will have a liquidation value of $25 per share and, as to dividend and liquidation rights, will rank equally with the DECS but prior to the Common Stock. Holders of Preferred Stock will be entitled to receive, when, as and if declared by Columbia's board of directors, cumulative preferential cash dividends accruing from the Effective Date at a rate per share that is to be determined in accordance with a pricing formula. It is currently expected that the dividend rate for Preferred Stock will not exceed 11 percent per annum. Columbia may, at its option, redeem the Preferred Stock in whole or in part on or prior to the 120th day following the Effective Date, so long as at least $50 million of preferred stock or none remain outstanding or if all Preferred Stock is to be redeemed no DECS are outstanding. If the Preferred Stock is not so redeemed, the dividend rate will be reset and increased by 100 basis points per share per year effective as of the 120th day after the Effective Date. Columbia may also redeem the Preferred Stock in whole or in part on or after the fifth anniversary of the Effective Date. Upon any such redemption by Columbia, a holder of Preferred Stock will receive, in exchange for each share so redeemed, cash in an amount equal to the sum of the liquidation value thereof and all accrued and unpaid dividends thereon to the date fixed for redemption.

The holders of Preferred Stock shall not have voting rights except as required by law and as follows: (i) if dividends on the Preferred Stock are in arrears and unpaid for six quarterly dividend periods, the holders of the Preferred Stock will be entitled to vote, on the basis of one vote for each share, for the election of two directors of Columbia, such directors to be in addition to the number of directors constituting the board of directors immediately prior to the accrual of such right; and (ii) the holders of Preferred Stock will have voting rights with respect to certain modifications of Columbia's certificate of incorporation.

D. DECS

The proposed DECS will be shares of convertible preferred stock of Columbia and have dividend, liquidation and voting rights similar to the Preferred Stock described above. The dividend rate will be determined to make the market value of the DECS comparable to the market value of the Common Stock and the liquidation value will be based on the market value of the Common Stock as of a specified date. It is currently expected that the dividend rate on the DECS will not exceed 11 percent per annum. The DECS will be mandatorily convertible into Common Stock. Columbia will have the right on or prior to the 120th day after the Effective Date to redeem the DECS, so long as at least $50 million DECS or none remain outstanding. If Columbia fails to redeem the DECS, the dividend rate will increase by 100 basis points per share per year effective as of the 120th day after the Effective Date.

Until the fifth anniversary of the Effective Date (the ''Mandatory Conversion Date''), a holder of DECS may, at its option, convert its DECS into shares of Common Stock at the applicable conversion rate. On or after the fourth anniversary of the Effective Date or the month before the fifth anniversary after the Effective Date (as determined by Columbia prior to the Effective Date) and prior to the Mandatory Conversion Date, Columbia may redeem the outstanding DECS in whole or in part. Upon any such redemption by Columbia, each holder of DECS will receive, in exchange for each redeemed share, a certain number of shares of Common Stock equal to the call price of the DECS in effect on the date of redemption divided by the current market price of Common Stock on the trading day prior to the public announcement of Columbia's call for redemption. If the DECS have not already been converted by the holder or redeemed by Columbia, as described above, then all the outstanding DECS will convert automatically on the Mandatory Conversion Date into shares of Common Stock at the applicable conversion rate in effect on such date. The Columbia Plan proposes that the conversion rate initially will be subject to adjustment.

E. Bank Facilities

Columbia proposes to enter into the Bank Facilities on or before the Effective Date. Columbia states in its Application-Declaration that it will seek to arrange a senior unsecured term credit facility (''Term Facility'') and one or more senior unsecured revolving credit facilities (collectively, the ''Revolving Facility'') in an aggregate principal amount of up to $1.15 billion. The facilities may be combined in a single facility.

The Term Facility would be used to fund payments to Columbia's creditors pursuant to the Columbia Plan, obligations of Columbia Transmission pursuant to the TCO Plan and for general corporate purposes. It is anticipated that the initial term of the Term Facility will be two years. Interest rates on borrowings under the Term Facility will be, depending on the nature of the borrowing, the prime rate or the applicable LIBOR rate plus no more than .75% or the applicable certificate of deposit rate plus no more than .875%. Amounts borrowed under the Term Facility will be senior unsecured debt of Columbia.

It is contemplated that the Revolving Facility will be used to provide working capital for Columbia and its subsidiaries. It is anticipated that the initial term of the Revolving Facility will not exceed five years. Up to $100 million of the Revolving Facility is expected to be used solely for letters of credit to be issued for the account of Columbia (a portion of which may be denominated in Canadian dollars) in the ordinary course of its business.

Interest rates on borrowings under the Revolving Facility will be, depending on the nature of the borrowing, the prime rate or specified margins over the applicable LIBOR rate or applicable certificate of deposit rate on the same or similar margin and maturity terms as the Term Facility. Amounts borrowed under the Revolving Facility will be senior unsecured debt of Columbia. The specific terms of the Revolving Facility, including, without limitation, interest rates, repayment terms, conditions to borrowings, representations and warranties, covenants and events of default will be negotiated by Columbia and prospective providers of the Revolving Facility.

F. Disposition of LESOP Shares

Columbia established the LESOP in 1990 to pre-fund, on a tax-advantaged basis, a portion of the employer-matching obligation under the terms of

the Thrift Plan. The Columbia Plan proposes that the LESOP will be terminated on the Effective Date in accordance with the provisions of the LESOP trust and that Columbia will concurrently repurchase the Common Stock currently held by the LESOP trust (the ''LESOP Shares''). It is Columbia's intention to initially hold the LESOP Shares in treasury and later reissue or otherwise utilize them for one of the following purposes deemed appropriate by Columbia: (i) selling LESOP Shares on the market over time, (ii) funding distributions to Columbia Transmission's creditors pursuant to the TCO Guarantee (defined below), (iii) using them in connection with funding aproved employee benefit programs and/or (iv) funding the settlement of the Securities Action pursuant to the Columbia Plan.

G. Public Offering of Additional Columbia Equity

If Columbia elects to redeem the Preferred Stock and DECS on or prior to the 120th day after the Effective Date and elects to fund such redemption through the issuance and sale of up to 16 million shares of Common Stock or preferred stock, authorization is requested for the issuance of such securities subject to a reservation of jurisdiction over the terms of any such issuance and sale of Common Stock and preferred stock.

H. Potential Offering of Columbia Securities in Connection with Settlement of Securities Action

The Columbia Plan proposes the payment by Columbia and other non-debtor defendants of up to $18 million to settle the claims in connection with the Securities Action. Under the Columbia Plan, Columbia has the option to increase this settlemtn amount if, based on the filing of supplemental proofs of claim or questionnaires, as authorized by the Bankruptcy Court, it is insufficient to meet the range of recoveries provided for in the Columbia Plan. In that event, the Columbia Plan provides that Columbia may elect to pay its portion of the settlement amount exceeding $18 million in the form of Common Stock or may withdraw its settlement offer and elect to pay securities claims, when and if allowed by the Bankruptcy Court, in Common Stock or cash.

I. Restated Certificate of Incorporation

The Columbia Plan provides that Columbia's certificate of incorporation will be amended and restated (the ''Restated Certificate of Incorporation'') in accordance with applicable provisions of the Delaware General Corporation Law and the Bankruptcy Code. The Restated Certificate of Incorporation, as more specifically described in the application-declaration, would, among other things, prohibit the issuance of non-voting equity securities as required by the Bankruptcy Code and increase the number of authorized shares of Preferred Stock (some of which may be issued on and after the Effective Date in order to effectuate the Columbia Plan as described above).

The Restated Certificate of Incorporation also includes various provisions that are necessary to permit the issuance of Preferred Stock and DECS under the Columbia Plan. These provisions differ from the similar provisions in the current Certificate of Incorporation in that they (i) decrease the par value of Preferred Stock from fifty dollars ($50) to ten dollars ($10), (ii) delete the restriction on Common Stock dividends and amounts of secured debt, (iii) remove and conform specific provisions regarding preferred voting rights, dividend rights and liquidation rights and (iv) permit the Board of Directors to determine the specific rights, powers and preferences of each series of Preferred Stock, and the limitations thereon, at the time of issuance.

J. The Columbia Omnibus Settlement Under the TCO Plan

To facilitate the TCO Plan and in exchange for settlement of the litigation challenging Columbia's claims against Columbia Transmission and certain transfers made by Columbia Transmission to Columbia and another affiliate prior to the Petition Date and retention of its ownership of Columbia Transmission, the Columbia Board of Directors authorized the ''Columbia Omnibus Settlement'' whereby Columbia will:

(i) Make a capital infusion into Columbia Transmission of approximately $1 billion, said capital contribution to have two components: (A) Columbia will agree to a restructuring of Columbia Transmission secured debt and the acceptance of $1.5 billion in new secured debt in settlement of the $2 billion claim held by Columbia under the existing secured debt, resulting in an approximate $500 million capital contribution of the balance of the claim. (B) Columbia will agree to provide cash to Columbia Transmission necessary so that the total amount distributable under the TCO Plan equals approximately $3.9 billion including the approximate $2 billion of Columbia's secured claim referred to above. Columbia Transmission is projecting cash on hand totaling approximately $1.4 billion as of December 31, 1995. Therefore, the shortfall that Columbia would fund through an additional capital contribution would be approximately $500 million, of which about $300 million could be met by Columbia's proportionate recovery on the Columbia Transmission unsecured debt held by it and recovery by another subsidiary on its claims followed by a dividend out of retained earnings by that subsidiary to Columbia. (ii) Guarantee (the ''TCO Guarantee'') (a) the settlement reached by Columbia Transmission with its customers and payments to dissenting customers with respect to ultimately allowed claims (the ''Customer Settlement'') and (b) the payment of the same distribution percentage of ultimately allowed claims of claimants who do not accept the TCO Plan, including producers that ultimately do not accept the Columbia Transmission Producer Settlement (''Dissenting Producers''). In the event that payments required by the TCO Plan to Dissenting Producers (and dissenting customers) increase the total required distributions over the projected $3.9 billion by an amount which requires external funding, Columbia will have the option to utilize Common stock in lieu of cash payments (and, of course, the option to sell Common Stock in the marketplace and utilize the proceeds for such excess distributions). Under these possible circumstances, whichever technique is employed, Columbia's investment in Columbia Transmission will be correspondingly increased.

Accepting producers have agreed to a 5 percent (5%) holdback from the distributions due to them and have agreed that, to the extent that claim values in excess of the settlement values contained in the TCO Plan are agreed to or proven, the holdback will be applied with dollar for dollar matching by Columbia Transmission (and Columbia under the TCO Guarantee) to pay the ultimate distributions to Dissenting Producers. Thus, there is a sharing by the accepting producers of a portion of the risk that the aggregate distribution to producers pursuant to the TCO Plan may exceed the settlement amount contained in the Plan. If the holdback is expended, Columbia Transmission would be required to pay the entire amount of the excess.

Northeast Utilities Service Co., et al. (70–8641)

Northeast Utilities Service Company (''NU Service''), 107 Selden Street, Berlin, Connecticut, 06037, a nonutility subsidiary company of Northeast

Utilities (''NU''), a registered holding company, and four electric utility subsidiary companies of NU (''Utilities''), Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01809; Holyoke Water Power Company, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01809; The Connecticut Light and Power Company, 107 Selden Street, Berlin, Connecticut, 06037; and Public Service Company of New Hampshire, 1000 Elm Street, Manchester, New Hampshire, 03015, have filed an application under sections 9(a) and 10 of the Act.

The application seeks Commission authorization to engage in electric power brokering and marketing transactions (''Proposed Activities'') in the northeastern United States, which includes the New England Power Pool (''NEPOOL''). Under the Proposed Activities, the NU system would match electric power supplies with customers that the NU system is unable to supply, for which the NU system would receive a brokerage fee (''Brokering''). Under the Proposed Activities, the NU system also would act as a principal in electric power sales between buyers and sellers (''Marketing''). Marketing transactions may include fuel-for-power transactions in connection with which the NU system would substitute other sources of electric power for electric power generated by the Utilities.

The Proposed Activities would generally be conducted by NU Service on behalf of the Utilities. Revenues from the Proposed Activities would be credited to reduce the costs of operation of the Utilities. Revenues from Brokering are not expected to exceed $1 million in 1995 and in 1996. Revenues from Marketing are not expected to exceed $110 million in 1995 and in 1996.

National Fuel Resources, Inc. (70–8651)

National Fuel Resources, Inc. (''NFR''), 478 Main Street, Buffalo, New York 14202, a wholly-owned nonutility subsidiary of National Fuel Gas Company, a registered public utility holding company, has filed an application-declaration with this Commission under sections 6(a), 7, 9(a) and 10 of the Act.

NFR proposes to engage in electric power marketing and brokering. It is stated that a typical electric power marketing or brokering transaction would involve the purchase of electric power from an electric generator and the resale of that power to another utility (wholesale) or an end-user (retail). The customer or NFR would contract with an electric utility for power transmission capacity. NFR proposes to engage in long-term power purchases and sales. NFR also proposes to trade in any electricity futures market that may develop to cover its obligations in the market.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–16051 filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21160; 811–6063]

Smith Barney Shearson Short-Term World Income Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANTS: Smith Barney Shearson Short-Term World Income Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On March 16, 1990, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on March 16, 1990, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on May 30, 1990, and applicant commenced its initial public offering shortly thereafter.

2. On March 29, 1994, the board of trustees of applicant and the board of trustees of Smith Barney Income Funds (the ''Acquiring Fund''), respectively, approved an Agreement and Plan of Reorganization (the ''Reorganization'') providing for the transfer of all or substantially all the assets of applicant to Smith Barney Global Bond Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of trustees of the Acquiring Fund, including the trustees who are not interested persons, concluded that the Reorganization would be in the best interests of their respective investment companies and that the interests of their respective shareholders would not be diluted as a result.

3. The registration statement on Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on or about June 2, 1994. At a special meeting of shareholders held on July 5, 1994, the shareholders of applicant approved the Reorganization.

4. As of July 15, 1994, applicant had 6,035,746 Class A shares outstanding having an aggregate net asset value of $37,703,310 and a per share net asset value of $6.25. At such date, applicant also had 2,695,166 Class B shares outstanding, having an aggregate net asset value of $16,840,661 and a per share net asset value of $6.25. Applicant had no other classes of securities outstanding. On July 15, 1994, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter,

applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $130,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file the appropriate notice of termination with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15943 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21158; 811–5417]

Smith Barney Shearson Small Capitalization Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Smith Barney Shearson Small Capitalization Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0464 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On October 23, 1987, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on October 23, 1987, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on December 4, 1987, and applicant commenced its initial public offering shortly thereafter.

2. On August 27, 1993 and August 30, 1993, the board of trustees of applicant and the board of directors of Smith Barney Investment Funds Inc. (the ''Acquiring Fund''), respectively, approved an Agreement and Plan of Reorganization (the ''Reorganization'') providing for the transfer of all or substantially all of the assets of applicant to Smith Barney Special Equities Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of directors of the Acquiring Fund, including the directors who are not interested persons, concluded that the Reorganization would be in the best interests of their respective investment companies and that the interests of their respective shareholders would not be diluted as a result.

3. The registration statement on Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on October 4, 1993. At a special meeting of shareholders held on November 18, 1993, the shareholders of applicant approved the Reorganization.

4. As of November 19, 1993, applicant had 2,210,471 Class A shares outstanding having an aggregate net asset value of $34,338,383 and a per share net asset value of $15.53. At such date, applicant also had 346,133 Class B shares outstanding, having an aggregate net asset value of $5,339,634 and a per share net asset value of $15.43. Applicant had no other classes of securities outstanding. On November 19, 1993, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund in exchange for shares of the Acquiring Fund. Immediately thereafter, applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $30,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file the appropriate notice of termination with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15944 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–21159; 822–6219]

Smith Barney Shearson Worldwide Prime Assets Fund; Notice of Application

June 22, 1995.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the ''Act'').

APPLICANT: Smith Barney Shearson Worldwide Prime Assets Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has cased to be an investment company.

FILING DATES: The application was filed on March 31, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 17, 1995, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington D.C. 20559. Applicant, Smith Barney Inc., 388 Greenwich Street, New York, New York 10013.

FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0563, or Robert A. Robertson, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a Massachusetts business trust. On November 19, 1990, applicant filed a notice of registration on Form N–8A pursuant to section 8(a) of the Act. Also on November 19, 1990, applicant filed a registration statement under section 8(b) of the Act and under the Securities Act of 1933 on Form N–1A to register an indefinite number of shares. Applicant's registration statement was declared effective on January 29, 1991, and applicant commenced its initial public offering shortly thereafter.

2. On March 29, 1994 and March 31, 1994, the board of trustees of applicant and the board of trustees of Smith Barney Income Funds (the ''Acquiring Fund''), respectively, approved an Agreement and Plan of Reorganization (the ''Reorganization'') providing for the transfer of all or substantially all of the assets of applicant to Smith Barney Shearson Limited Maturity Treasury Fund, a portfolio of the Acquiring Fund, in exchange for shares of the Acquiring Fund. In accordance with rule 17a-8 under the Act, the board of trustees of applicant, including the trustees who are not interested persons, and the board of trustees of the Acquiring Fund, including the trustees who are not interested persons, concluded that the Reorganization would be in the best interest of their respective investment companies and that the interest of their respective shareholders would not be diluted as a result.

3. The registration statement of Form N–14 was filed with the SEC and the proxy statement/prospectus contained therein was mailed to applicant's shareholders on June 2, 1994. At a special meeting of shareholders held on July 5, 1994, the shareholders of applicant approved the Reorganization.

4. As of July 15, 1994, applicant had 29,767,799 Class A shares outstanding having an aggregate net asset value of $49,994,241 and a per share net asset value of $1.68. At such date, applicant had no other classes of shares outstanding. On July 15, 1994, pursuant to the Reorganization, applicant transferred all its assets to the Acquiring Fund. Immediately thereafter, applicant liquidated and distributed *pro rata* to its shareholders the shares that it received of the Acquiring Fund. Each shareholder of applicant received shares of the Acquiring Fund having an aggregate net asset value equal to the aggregate net asset value of his or her investment in applicant.

5. Applicant and the Acquiring Fund each paid half of the expenses of the Reorganization. Such expenses equaled approximately $106,000 and consisted of accounting, printing, administrative, and certain legal expenses.

6. Applicant has no security holders, assets, debts, or other liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not engaged and does not propose to engage in any business activity other than those necessary for the winding up of its affairs.

7. Applicant intends to file a letter of withdrawal with the Office of the Secretary of State of the Commonwealth of Massachusetts to effect the termination of applicant as a Massachusetts business trust.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–15945 Filed 6–28–95; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

First Meeting of the Representative Payment Advisory Committee

AGENCY: Social Security Administration.

ACTION: Notice.

DATES: July 20, 1995, 9:00 a.m.–5:00 p.m.; July 21, 1995, 9:00 a.m.–3:00 p.m.

ADDRESSES: The Capitol Holiday Inn Hotel, 550 C Street SW., Washington, DC 20004.

SUPPLEMENTARY INFORMATION:

Type of Meeting: The meeting is open to the public.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces the first meeting of the Representative Payment Advisory Committee. The Committee will provide the Commissioner of Social Security independent advice, counsel, and recommendations regarding SSA's responsibilities directly or indirectly associated with the administration of its representative payment program as authorized by sections 205(j) and 1631(a)(2) of the Act. The Committee will advise the Commissioner concerning representative payment policy in five broad areas: (1) Beneficiary incapability; (2) payee selection; (3) payee recruitment and retention; (4) standards for payee performance; and (5) payee oversight. The Committee will review all phases of representative payment policy. The Committee will assess the need for change in representative payment policy and make recommendations for possible legislation. Its deliberations will focus on protecting beneficiary rights, promoting beneficiary well-being and self-sufficiency, and setting appropriate standards for payee performance, as well as sanctions for malfeasance. Specific issues may include whether (and how) SSA should change its policies relating to evidentiary standards for determining beneficiaries' (in)capability, whether special payee investigatory and selection policies are needed for cases involving beneficiaries who are substance abusers or who are homeless, development of more

definitive guidelines on acceptable uses of benefits by payees, and establishing policies for payment for payee services where such payment is authorized by law.

Agenda: The full Committee will meet commencing at 9:00 a.m. on Thursday, July 20, 1995 until 5:00 p.m. and from 9:00 a.m. to 3:00 p.m. on Friday, July 21. Agenda items on July 20 will include, but not be limited to: swearing in of Committee members; brief introductory remarks by Committee members; pronouncement of mission statement; establishment of ground rules for meetings; briefing by SSA officials on various issues, including privacy or ethical concerns; and comments from selected experts in the five broad policy areas being considered. Oral statements are sought from the public for presentation on July 21. Presentation will be limited to 5 minutes per public speaker.

Persons interested in presenting an oral statement should submit a written request, along with a copy of their statement, to the Representative Payment Advisory Committee, P.O. Box 17763, Baltimore, MD 21203–7763. Requests should contain the name, address, telephone number and any business or professional affiliation of the person desiring to make an oral statement. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Representative Payment Advisory Committee will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up at the meeting site before noon on July 21. These persons will be allowed to present their oral statement as time permits. The Committee also welcomes written comments. They may be sent to the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763.

Records will be kept of all Committee proceedings, and will be available for public inspection at the office of the Representative Payment Advisory Committee, Room 2–N–24, Operations Building, 6401 Security Boulevard, Baltimore, MD 21203 between the hours of 9:00 a.m. to 4:00 p.m. on regular business days. Anyone requiring information regarding the Committee should contact the Representative Payment Advisory Committee at P.O. Box 17763, Baltimore, MD 21203–7763; Telephone: (410) 966–4688; FAX: (410) 966–0980; Internet: adcom@ssa.gov.

Dated: June 23, 1995.

Reba R. Andrew,

Staff Director, Representative Payment Advisory Committee.

[FR Doc. 95–16000 Filed 6–28–95; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended June 23, 1995

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 50410
Date filed: June 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1067 dated May 30, 1995, South Pacific Resos r-1 to r-26
Proposed Effective Date: October 1, 1995

Docket Number: 50411
Date filed: June 19, 1995
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1670 dated May 23, 1995 Mid Atlantic-Europe Resolutions
r-1 to r-33 TC12 Reso/P 1671 dated May 23, 1995 Mid Atlantic-Middle East Resolutions r-34 to r-44
Proposed Effective Date: October 1, 1995.

Paulette V. Twine,

Chief Documentary Services Division.

[FR Doc. 95–16037 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 23, 1995

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due dates for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 50412
Date filed : June 20, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 18, 1995
Description: Application of LTU Lufttransport-Unternehmen GmbH. & Co. KG, pursuant to 49 U.S.C. Section 41302, and Subpart Q of the Regulations, applies to add Daytona Beach, Florida to its Foreign Air Carrier Permit as a coterminal point for scheduled service between Germany and the United States.

Docket Number: 50328
Date filed : June 22, 1995
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 21, 1995
Description: Amendment No. 1 to the Application of Atlant-Soyuz Airlines, pursuant to 49 U.S.C. Section 41302 of the Act and Subpart Q of the Regulations, requests an amendment to its foreign air carrier permit to offer passenger service in addition to charter cargo service between the Russian Federation and the United States.

Paulette V. Twine,

Chief, Documentary Services Division.

[FR Doc. 95–16036 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Office of the Secretary

[OST Docket 50125]

Department of Transportation Final Environmental Justice Strategy

AGENCIES: Office of the Secretary: Departmental Office of Civil Rights and Office of Assistant Secretary for Transportation Policy; DOT.

ACTION: Notice of final environmental justice strategy.

SUMMARY: The Department of Transportation is issuing its final environmental justice strategy, which contains the Department's commitment to certain principles of environmental justice embodied in the Secretary's Strategic Plan, and identifies actions the Department intends to take to implement Executive Order 12898. The strategy is published as a final document; however, it should be viewed as a living document that may be adjusted periodically in response to insights acquired while implementing its various provisions.

The strategy is issued in response to Executive Order 12898, signed by President Clinton on February 11, 1994. The Order directs each Federal agency to develop a strategy to address

environmental justice concerns in its programs, policies and regulations. The thrust of the Executive Order is to avoid disproportionately high and adverse impacts on minority and low-income populations with respect to human health and the environment.

Published elsewhere in this edition of the **Federal Register** is a proposed Order on environmental justice providing guidance to be followed by the Department of Transportation and its operating administrations to implement executive Order 12898.

FOR FURTHER INFORMATION CONTACT: Ira Laster, Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, telephone (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, telephone (202) 366–9366, U.S. Department of Transportation, 400 7th Street SW, Washington, D.C. 20590.

Dated: June 21, 1995.

Antonio J. Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Department of Transportation

Environmental Justice Strategy

Introduction

This strategy is issued in response to Executive Order 12898, signed by President Clinton on February 11, 1994, on ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.'' This strategy sets forth the Department of Transportation's (DOT) approach to implementing E.O. 12898 in all relevant programs and activities sponsored, supported and undertaken by the Department. The Executive Order requires each Federal agency to develop a specific agency-wide strategy for implementing its provisions. The thrust of the Executive Order is to identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of each agency's programs, policies, and activities on minority populations and low-income populations.

The strategy contains the Department's commitment to certain principles of environmental justice embodied in the Secretary's Strategic Plan, and identifies actions the Department intends to take to implement Executive Order 12898. The strategy is published as a final document; however, it should be viewed as a living document that may be adjusted periodically in response to insights acquired while implementing its various provisions. DOT plans further opportunity for public comments on its strategy and implementing actions.

DOT is committed to embracing the objectives of Executive Order 12898 by promoting enforcement of all applicable planning and environmental regulations and legislation, and by promoting non-discrimination in its programs, policies and activities that affect human health and the environment, consistent with Executive Order 12898, and Title VI of the Civil Rights Act of 1964. DOT is also committed to bringing government decisionmaking closer to the communities and people affected by these decisions and ensuring opportunities for greater public participation in decisions relating to human health and the environment.

Many of the objectives of the E.O. are embodied in the missions, goals, and objectives of the Secretary's Strategic Plan and are briefly summarized as follows:

- Improve the environment and public health and safety in the transportation of people and goods, and the development and maintenance of transportation systems and services.
- Harmonize transportation policies and investments with environmental concerns, reflecting an appropriate consideration of economic and social interests.
- Consider the interests, issues, and contributions of affected communities, disclose appropriate information, and give communities an opportunity to be involved in decisionmaking.

The Department will implement the E.O. by integrating its provisions into existing DOT programs, policies, activities, regulations, and guidance to the greatest extent possible.

Development of the DOT Strategy

1. Secretary's Directive

Upon receipt of the Executive Order and the accompanying Presidential Memorandum, Secretary Peña established a Department-wide working group and directed the development of a Department-wide strategy.

During senior level staff meetings in December 1994 and March 1995, Secretary Peña emphasized his commitment to comply with Executive Order 12898 and instructed senior level staff to support the executive order and encouraged them to incorporate the principles of environmental justice in program planning, budgeting, program development, program activities, and program evaluation, as appropriate.

In a recent memorandum to Secretarial offices and operating administrations,* Secretary Peña stated his strong personal endorsement of their efforts to carry out the responsibilities set out in the Department's Environmental Justice Strategy in an effective and timely manner.

a. National Conference on Transportation, Social Equity, and Environmental Justice in Chicago.

This conference, cosponsored by the Federal Transit Administration and the Surface Transportation Policy Project, brought together approximately 150 persons, mostly community activists from around the country, with DOT and other public officials. The meeting, held on November 17–18, 1994, in Chicago identified key transportation-related environmental and social issues of concern to persons living in predominately low-income and minority communities. Suggestions for actions to redress these concerns were also sought.

b. Inter-Departmental Public Meeting in Atlanta

On January 20, 1995, DOT participated, along with other Federal departments/agencies, in a public meeting in Atlanta to solicit comments on environmental justice issues as they relate to Federal Government programs. A portion of the meeting was televised nationwide by satellite to designated downlink sites.

c. Federal Register Notice

DOT published its proposed strategy in the **Federal Register** on February 21, 1995, with a request for comment. In addition, the Department mailed approximately 3,000 copies of the document to Departmental constituent groups and representatives of the environmental justice community. Based on comments received, DOT modified its strategy and streamlined its description in this document.

Elements of the DOT Strategy

1. Public Outreach on Implementation of the Environmental Justice Strategy

DOT plans, and will review with environmental justice stakeholders, its plans for the following activities: (1)

*Operating administrations, a.k.a. modal administrations, include: The United States Coast Guard, the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, the National Highway Traffic Safety Administration, the Federal Transit Administration, the St. Lawrence Seaway Development Corporation, the Maritime Administration, and Research and Special Programs Administration.

grass roots meetings to better understand community-based environmental justice concerns and to provide training on the transportation decisionmaking processes; (2) a secretarial level meeting of experts, traditional DOT stakeholders and environmental justice representatives to recommend specific policies and actions to implement Executive Order 12898 and the Department's Environmental Justice Strategy; and (3) regional workshops for state and local officials on implementing the Strategy.

2. DOT Order on Environmental Justice

A key component of the DOT Environmental Justice Strategy is a proposed DOT Order providing guidance to be followed by the Department and its operating administrations to implement Executive Order 12898. The DOT Order will apply to all appropriate DOT regulations, policies, guidance, and program activities as well as to any program, project, or activity undertaken by DOT or that receives financial assistance or permits from DOT, which may have environmental justice implications. The proposed DOT Order would ensure that all appropriate components of the Department will apply this strategy to appropriate aspects of their programs, policies, and activities in a way that integrates environmental justice considerations into existing agency operations rather than creating a separate set of requirements.

While the precise contents of the proposed DOT Order have not yet been fully developed, the Department anticipates that the Order will achieve several objectives. First, under the proposed Order, the Office of the Secretary and operating administrations of DOT would review their regulations, programs, policies, guidance, and procedures that affect human health or the environment to identify those that should be revised and revise them, as appropriate, to comply with Executive Order 12898. This review will include, but not be limited to, regulations, programs, policies, guidance, and procedures related to short and long-range planning and programming, the National Environmental Policy Act (NEPA), pollution prevention, worker safety, environmental compliance, hazardous materials transportation, research, data collection, training, public participation, and relocation.

Second, the proposed DOT Order would set forth guidance to be used by DOT, its operating administrations, the recipients of DOT financial assistance, and state and local officials to determine whether a DOT or a DOT-funded program, policy, project, or activity (DOT action) is likely to have disproportionately high and adverse human health or environmental effects on low-income or minority populations. As part of this process, DOT, its operating administrations, and recipients of Federal financial assistance will provide appropriate and meaningful opportunities for comment by representatives of affected communities.

Third, under the proposed DOT Order, DOT would develop potential strategies and measures to address, as appropriate, disproportionately high and adverse effects of their actions and those of recipients of DOT funds, consistent with requirements of other statutes and procedures. These measures may include pollution prevention, and health and safety measures, as well as mitigation and compensatory measures. This process would include procedures to provide meaningful opportunities for public involvement by low-income and minority populations, including community input in identifying potential mitigation measures for DOT actions.

The proposed DOT Order also would provide for data collection or research as needed to provide information to comply with Executive Order 12898. Public input will be solicited regarding these activities.

The DOT Order will provide guidance on how to achieve compliance with Executive Order 12898 under existing environmental and civil rights laws in cases where disproportionate impacts have been identified. (The DOT Order was distributed for public review in draft form on May 11, 1995, at an environmental justice conference in Atlanta, Georgia.)

3. DOT Training on Environmental Justice

In order to ensure that DOT managers are fully aware of their responsibilities under Executive Order 12898 and pre-existing statutory mandates, DOT will hold information seminars on environmental justice for selected program managers throughout the Department. Representatives of the environmental justice community will be consulted in the planning of these seminars.

In addition, in keeping with the Department's philosophy of integrating environmental justice considerations into all appropriate departmental programs and activities, DOT operating administrations will review and modify existing training courses to ensure adequate coverage of environmental justice principles and to use training examples that include environmental justice aspects. These courses include such subjects as compliance with environmental mandates, infrastructure planning and development, public involvement, and management of departmental facilities and resources. The audience for these training courses includes DOT employees and recipients of DOT funding.

Role of Key DOT Elements in Complying With Environmental Justice Executive Order

Each element of the Department will undertake specific actions needed to implement the DOT Order on environmental justice. The actions undertaken will be developed and refined as the Department's strategy evolves. The following organizations will have key roles to play in the implementation process:

a. Assistant Secretary for Transportation Policy

The Office of the Assistant Secretary for Transportation Policy maintains liaison with various elements of the Department in an effort to ensure that each appropriate element examines its programs and activities and takes appropriate actions to comply with Executive Order 12898. This office is also responsible for monitoring implementation of the DOT environmental justice strategy to help keep the strategy relevant and foster consistency and comprehensiveness in complying with the principles embodied in the Executive Order. In addition, the office will work to keep high-level Departmental officials properly involved in achieving the strategy's objectives and in maintaining liaison with non-DOT departments and agencies as well as the environmental justice community.

The Department will review and update, as appropriate, its Procedures for Considering Environmental Impacts, DOT Order 610.1C, to ensure that it is consistent with Executive Order 12898 and DOT's proposed order on environmental justice. Attachment 2 to Order 5610.1C sets forth guidance on the format and content of environmental review documents and compliance with the National Environmental Policy Act and other environmental statutes, regulations, and executive orders, such as Section 4(f) of the DOT Act (49 U.S.C. 303). This attachment will be updated to reflect the requirements of Executive Order 12898 and to outline the need to address potential disproportionately high and adverse health, or environmental impacts on affected

populations and communities. DOT operating administrations also will review and update their own environmental guidance.

b. Departmental Office of Civil Rights

Executive Order 12898 and the accompanying Presidential Memorandum underscore certain provisions of existing laws that can be used to ensure that all persons live in a safe and healthy environment. The Memorandum focuses on Title VI of the Civil Rights Act, which provides that programs and activities of recipients of Federal financial assistance may not discriminate based on race, color or national origin. The proposed DOT Order described above will provide the operating administrations with a framework to ensure that their policies, programs, and procedures comply with the intent of the Executive Order, including meeting the requirements of Title VI.

In addition, the Departmental Office of Civil Rights will provide leadership and technical assistance to the operating administrations and to major recipients of DOT funds in the administration of their Title VI responsibilities which relate to environmental justice. This may take the form of guidelines, memoranda of general applicability, and training designed to achieve environmental justice for members of minority populations.

c. Operating Administrations

DOT and its operating administrations will review the allocation of education and research funds to historically black colleges and universities and other minority institutions and minority students and faculty in light of E.O. 12898. In addition, DOT will review its research programs to determine whether and how minority and low-income populations may be more appropriately included in the scope of particular research projects. Improved outreach to affected populations will be developed.

Each operating administration will implement the DOT strategy, including public outreach, the DOT Order on environmental justice, and training. Each operating administration will continue to cooperate in these matters with the Departmental Office of Civil Rights and the Assistant Secretary for Transportation Policy.

[FR Doc. 95–15665 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

[OST Docket No. 50125]

Department of Transportation Proposed Order to Address Environmental Justice in Minority Populations and Low-Income Populations

AGENCY: Office of the Secretary: Departmental Office of Civil Rights and Office of the Assistant Secretary for Transportation Policy; Department of Transportation (DOT).

ACTION: Request for comments on U.S. Department of Transportation proposed DOT Order on environmental justice.

SUMMARY: This Notice proposes a DOT Order that would be used by DOT in complying with Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority and Low-Income Populations.* The proposed Order is intended to generally describe the process that the Office of the Secretary and each Operating Administration must use to incorporate environmental justice principles into existing programs, policies, and activities. The proposed Order would require the Office of the Secretary and each Operating Administration within DOT to develop specific procedures to apply the DOT Order and the Executive Order to the programs, policies and activities which they develop or implement. Comments on the proposed Order are requested.

DATES: Comments should be received by August 28, 1995. Late filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket 50125, Department of Transportation, 400 Seventh Street, SW., Room PL 401, Washington, D.C. 20590. To facilitate consideration of the comments, commenters are requested to file six copies of each submission. Comments will be available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Commenters who wish the Department to acknowledge receipt of their comments should include a stamped self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Ira Laster Jr., Office of Environment, Energy, and Safety, Office of the Assistant Secretary for Transportation Policy, (202) 366–4859, or Alyce Boyd-Stewart, Departmental Office of Civil Rights, (202) 366–9366, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Executive Order 12898, as well as the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all Departments and agencies), are intended to ensure that Federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects on minority populations and low-income populations in their programs, policies and activities.

The proposed Order is a key component of the Department's Environmental Justice Strategy. The proposed Order sets forth a process by which DOT and its Operating Administrations will integrate the goals of the Executive Order into its existing operations (Paragraphs 5a and 7a). This is to be done within the framework of existing requirements, primarily the National Environmental Policy Act, Title VI of the Civil Rights Act of 1964, the Uniform Relocation Assistance and Real Property Acquisition Policies Act, and other applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; or public involvement. The proposed Order is an internal directive to the various components of DOT and does not create any right to judicial review for compliance or noncompliance with the Order.

The proposed Order contains a methodology for (1) identifying adverse impacts (2) identifying mitigation and enhancement measures that will be taken to avoid or offset such impacts, and (3) determining whether the action will have a disproportionately high and adverse effect on minority or low income populations (Paragraph 3 of the Appendix). We recognize that a determination concerning disproportionately high and adverse effects will require the careful assessment of a variety of factors, and specifically request comments on the methodology set forth in paragraph 3c of the Appendix to the proposed Order.

If it is determined that an action will result in a disproportionately high and adverse effect on minority or low-income populations, then, under the Order, the action may not be carried out unless certain requirements are met. Paragraph 6 of the proposed Order sets forth three different options for these requirements, including: (1) Not allowing the action to be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable (Option A); (2) not allowing the action to be carried out unless further mitigation measures or

alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable, and unless certain more stringent requirements are met with respect to populations protected by Title VI (Option B); and (3) requiring consideration of certain factors with respect to actions that will have a disproportionately high and adverse effect, including whether there is a substantial need for the action and whether less discriminatory alternatives would have more severe impacts or would involve increased costs of extraordinary magnitude, but not otherwise preventing the action from being carried out (Option C). None of these options (or any other part of this Order) would reduce the protections provided by Title VI or any other Federal law.

A duty to address disproportionately high and adverse effects on certain populations may also be found in Title VI of the Civil Rights Act of 1964 and related statutes and regulations. The ability to require specific findings and remedial actions may differ somewhat for populations protected by Title VI and for low-income populations, since low-income persons are not a protected class under Title VI. For this reason, the DOT is considering including a provision in this Order which treats these two groups differently. This difference is seen most clearly in Option B. We will continue to consider DOT's authority with respect to low-income populations, based on the differing legal standards applicable to these populations.

We are soliciting comments on the options presented in Paragraph 6 of the proposed Order, and commenters are invited to suggest additional options for decisional tests or standards that would promote the goals of environmental justice, consistent with existing law, that DOT should consider. Comment is also sought on whether minority populations and low-income populations should be treated differently by the DOT Order.

Following receipt of comments the DOT Order will be finalized and published in the **Federal Register**.

Dated: June 21, 1995.

Antonio J. Califa,

Director, Departmental Office of Civil Rights.

Joseph Canny,

Deputy Assistant Secretary for Transportation Policy.

Proposed DOT Order

Subject: Department of Transportation Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

1. Purpose and Authority

a. This Order establishes procedures for the Department of Transportation (DOT) to use in complying with Executive Order 12898, entitled Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations. Relevant definitions are in the appendix.

b. The objective of this DOT Order is to set forth a process by which DOT and its operating administrations will integrate the goals of the Executive Order with existing requirements set forth in Title VI of the Civil Rights Act of 1964 (Title VI), the National Environmental Policy Act (NEPA), the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA), and other applicable statutes, regulations and guidance that concern planning; social, economic, or environmental matters; public health or welfare; or public involvement.

2. Scope

This Order applies to the Office of the Secretary, all operating administrations, and all other DOT components.

3. Background

Executive Order 12898 requires each Federal agency, to the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, to achieve environmental justice as part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including social and economic effects, of its programs, policies, and activities on minority populations and low-income populations in the United States. Compliance with this DOT Order is a key element in the environmental justice strategy adopted by DOT, and can be achieved within the framework of existing laws, regulations, and guidance.

4. Data Collection and Research

a. In complying with this Order DOT will rely upon the data collected (or readily available) for planning, for demonstrating compliance with NEPA or Title VI, or for other purposes. Consideration of the goals and objectives of Executive Order 12898 and this Order shall be an integral part of future DOT data collection and research activities.

b. To the extent permitted by existing law, and whenever practical and appropriate, DOT shall collect, maintain, and analyze information on the race, color, national origin, and income level of persons affected by DOT programs, policies, and activities, and use such information in complying with this Order.

5. Identifying Adverse Impacts and Determining Whether They Have a Disproportionately High and Adverse Effect on Minority or Low-Income Populations

a. The Office of the Secretary and each operating administration shall develop a process for identifying (1) adverse impacts, (2) mitigation and enhancement measures, and (3) disproportionately high and adverse effects on minority or low-income populations, using the methodology in the appendix. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the processes and objectives of this Order with their existing regulations and guidance, as outlined in paragraph 7.a.

b. *Actions Having a Disproportionately High and Adverse Effect on Minority Populations or Low-Income Populations.*

(1) If, after taking into account all mitigation and enhancement measures that will be taken and all offsetting benefits to the affected minority or low-income populations, the program, policy, or activity will still have an adverse impact, then DOT shall determine whether such adverse impact on minority populations or low-income populations is disproportionately high, using guidance in the appendix.

(2) Determinations made pursuant to this paragraph shall be incorporated in the NEPA or other document, described in paragraph 7.b.(3).

(3) The NEPA or other document described in paragraph 7.b.(3) shall contain a description of any measures that will be taken to address the disproportionately high and adverse effects on minority or low-income populations.

(4) This paragraph does not restrict the application of Title VI of the Civil Rights Act of 1964 to the program, policy, or activity, or otherwise limit or

preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity.

6. Actions to Address Disproportionately High and Adverse Effects.

[The following are options for consideration with respect to actions to address disproportionately high and adverse effects on minority populations and low-income populations under the Executive Order.]

Option A

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy, or activity may not be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a measure or alternative is ''practicable'', the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

(b) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

Option B

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy, or activity may not be carried out unless further mitigation measures or alternatives that would avoid or reduce the disproportionately high and adverse effect are not practicable. In determining whether a measure or alternative is ''practicable'', the social, economic (including costs) and environmental effects of avoiding or mitigating the adverse effects will be taken into account.

(b) In addition, if the program, policy or activity will have a disproportionately high and adverse effect on populations protected by Title VI of the Civil Rights Act of 1964 (''protected populations''), then the program, policy or activity may not be carried out unless a substantial need for the program, policy or activity, based on the overall public interest, can be demonstrated, *and*

(1) An agreement is reached with the potentially affected protected populations to proceed with the program, policy or activity, *or*

(2) Alternatives that will have less adverse effects on protected populations (and still satisfy the need identified in subparagraph (b) above) *either*

(A) Would have other high adverse social, economic, environmental, or human health impacts that are more severe, *or*

(B) Would involve increased costs of extraordinary magnitude.

(c) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

Option C

6. Actions to Address Disproportionately High and Adverse Effects

(a) If it is determined pursuant to paragraph 5.b above that the program, policy, or activity (including all offsetting mitigation and enhancement measures that will be taken) will have a disproportionately high and adverse effect on minority or low-income populations, then the program, policy or activity may not be carried out unless consideration has been given to the following factors:

(1) Whether a substantial need for the program, policy or activity, based on the overall public interest, can be demonstrated, *and*

(2) Whether alternatives that will have less adverse effects on minority or low-income populations (and still satisfy the need identified in subparagraph (1) above) *either*

(A) Would have other high adverse social, economic, environmental, or human health impacts that are more severe, *or*

(B) Would involve increased costs of extraordinary magnitude.

(b) Under Title VI of the Civil Rights Act of 1964, each federal agency is required to ensure that no person, on the ground of race, color, or national origin, is excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance. DOT's responsibilities under Title VI and related statutes and regulations are not limited by this paragraph, nor does this paragraph limit or preclude claims by individuals or groups of people with respect to any DOT program, policy, or activity under these authorities.

7. Integration With Existing Operations

a. The Office of the Secretary and each operating administration shall determine the most effective and efficient way of integrating the process and objectives of this Order with their existing regulations and guidance, and utilize existing authority in NEPA, Title VI, the URA and other statutes, regulations, and guidance that concern planning; social, economic, or environmental matters; public health or welfare; public involvement; or related matters. Within 6 months of the date of this Order each operating administration will provide a report to the Assistant Secretary for Transportation Policy and the Director of the Departmental Office of Civil Rights describing the procedures it has developed to integrate, or how it is integrating, the processes and objectives set forth in this Order into its operations. Public input on any procedures developed to comply with this Order should be solicited.

b. In undertaking the integration with existing operations described in paragraph 7.a., DOT shall observe the following principles:

(1) Planning and programming activities, that affect human health or the environment, shall include consideration of such effects on minority populations and low-income populations. Procedures shall be established or expanded, as necessary, to provide meaningful opportunities for public involvement by minority

populations and low-income populations during the planning and development of programs, policies, and activities (including the identification of potential impacts, alternatives, and mitigation measures).

(2) Affirmative steps shall be taken to provide the public, including minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities.

(3) The assessment of the effects of actions on minority populations or low-income populations, that is required by this Order, shall be included as part of any environmental document prepared in accordance with NEPA. If a program, policy, or activity that DOT determines is subject to the assessment prescribed by this Order is not subject to NEPA, or for any reason such impacts are not addressed in the NEPA document, a separate written analysis of such impacts shall be prepared and made available to the public. DOT may develop simplified assessments to the extent appropriate. Consideration of alternatives in these documents shall include comparisons of the impacts of each alternative on minority and low-income populations.

(4) DOT shall consider mitigation and enhancement measures to avoid or minimize environmental or human health impacts to minority populations and low-income populations in accordance with paragraph 3.b. of the Appendix.

c. All future rulemaking activities undertaken pursuant to DOT Order 2100.5 (which governs all DOT rulemaking), and the development of any future guidance or procedures for DOT programs, policies, or activities, that affect human health or the environment, shall address compliance with Executive Order 12898 and this Order, as appropriate.

d. The formulation of all future DOT policy statements and proposals for legislation will include consideration of the provisions of Executive Order 12898 and this Order.

8. Ongoing DOT Responsibility

Compliance with the Executive Order is an ongoing DOT responsibility. DOT will continuously monitor its programs, policies, and activities to ensure that potential disproportionately high and adverse effects on minority or low-income populations are avoided, minimized or mitigated in a manner consistent with this Order. The Department's Director of Civil Rights and the Assistant Secretary for Transportation Policy will have joint authority and responsibility for monitoring and enforcing the implementation of this Order. Nothing in this Order creates any right to judicial review of the compliance or noncompliance of DOT, its officers, employees, or any other persons, with this Order.

For the Secretary of Transportation.

Appendix—Guidance for Implementing Provisions of DOT

1. *Definitions.* The following terms where used in this Order shall have the following meanings: [1]

a. *DOT* means the Office of the Secretary, DOT operating administrations, and all other DOT components.

b. *Low-Income* means a person whose median household income is below the Department of Health and Human Services poverty guidelines.

c. *Minority* means a person who is a citizen or lawful permanent resident of the United States and who is:

(1) Black (a person having origins in any of the black racial groups of Africa);

(2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);

(3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or

(4) American Indian and Alaskan Native (a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition).

d. *Programs, policies, and/or activities* means all projects, programs, policies, and activities that affect human health and the environment, and which are undertaken or approved by DOT. These include (but are not limited to) permits, licenses, or financial assistance provided by DOT.

e. *Regulations and guidance* means regulations, programs, policies, guidance, and procedures promulgated, issued, or approved by DOT.

2. References

a. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations February 11, 1994, 59 **Federal Register** 7629.

b. National Environmental Policy Act, 42 USC 4371.

c. Title VI of the Civil Rights Act, 42 USC 2000(d).

3. Identifying Adverse Impacts, Mitigation and Disproportionate Impacts on Minority or Low-Income Populations

a. *Identifying Adverse Impacts.*

(1) As part of infrastructure planning and other developmental processes, DOT shall identify social, economic and environmental effects and determine whether such effects are likely to have adverse impacts on the total population and on minority or low-income populations. In making a determination regarding adverse impacts, DOT shall consider both the impacts of individual projects and the cumulative impacts of its programs and projects on all affected populations and shall provide opportunities for the public, including members of minority populations and low-income populations that could be affected, to provide their input on the potential impact of such DOT programs, policies, and projects.

(2) In the case of DOT programs, policies, or activities that do not involve infrastructure planning or developmental processes, the responsible DOT agency will develop a process for identifying adverse impacts and obtaining public input as appropriate.

(3) In determining whether or not an action will have an adverse impact, consideration shall be given to individual or cumulative effects, as appropriate. Adverse impacts may include, but are not limited to: air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality; destruction or disruption of the availability of public and private facilities and service; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion; isolation, exclusion or separation of minority or low-income individuals from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

b. *Identifying Mitigation and Enhancement Measures.*

(1) DOT will use its existing statutory authorities, including NEPA, Title VI, the URA, other crosscutting Federal requirements, and statutes that apply only to one or more DOT operating administration (for example 23 U.S.C. 109(h)), as well as related regulations and guidance, to develop effective mitigation and enhancement strategies and specific mitigation and enhancement measures that DOT will employ.

(2) DOT will examine existing programs that have been developed to ensure opportunities for minority populations and low-income populations to develop specific mitigation and enhancement measures that address social, economic, and environmental issues, and will offset disproportionately high and adverse effects.

(3) In determining whether or not there is an adverse impact, DOT shall take into account any offsetting mitigation and enhancement measures that will be taken (including those developed through the public involvement and community participation process), and any other offsetting benefits that will accrue to the affected minority populations or low-income populations as a result of the program, policy, or activity.

(4) The following are general approaches to mitigation and enhancement measures that will be utilized as reasonable and necessary, consistent with existing law:

[1] In the event governmentwide definitions are issued under the Executive Order, these definitions will be modified as necessary to conform to them.

(a) Avoiding or minimizing adverse impacts by reducing the degree or magnitude of the action or its implementation.

(b) Mitigating or eliminating adverse impacts by repairing, rehabilitating, or restoring the affected environment and/or community resource.

(c) Reducing or eliminating adverse impacts over time by long-term preservation and maintenance operations.

(d) Compensating for adverse impacts by replacing adversely impacted resources or providing substitute resources or environments that enhance the affected area.

c. *Determining Whether an Action Has a Disproportionately High and Adverse Effect on Minority Populations or Low-Income Populations.* An adverse impact shall be found to have a disproportionately high and adverse effect on low-income or minority populations when:

(a) The adverse impact is predominantly borne by a minority population and/or a low-income population, or

(b) The adverse impact that will be suffered by the minority population and/or low-income population is more severe or greater in magnitude than the adverse impact that will be suffered by the non-minority population and/or non-low-income population.

[FR Doc. 95–15666 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Civil Tiltrotor Development Advisory Committee

Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act Public Law (72–362); 5 U.S.C. (App. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) sponsored Civil Tiltrotor Development Advisory Committee (CTRDAC) to be held July 25 at 10:00 a.m. The meeting will take place at the U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. in rooms 10234–10236.

The agenda for the third meeting of the CTRDAC will include:

(1) A review of the October 6 meeting minutes;

(2) Discussion of subcommittee executive summaries;

(3) Discussion of subcommittee reports;

(4) Identification of policy issues;

(5) Review of work plans/schedule;

(6) Other business.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lenora Harris, Staff Assistant to the Designated Federal Official on (202) 267–8787 prior to July 20. Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Harris.

Members of the public may present a written statement to the Committee at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Lenora Harris (202) 267–8787 at least seven days prior to the meeting.

Issued in Washington, D.C. on June 23, 1995.

Dean M. Resch,

Acting Designated Federal Official, Civil Tiltrotor Development, Advisory Committee.

[FR Doc. 95–15991 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee; Aviation Weather Subcommittee

Pursuant to section 10 (A) (2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Aviation Weather Subcommittee of the Federal Aviation Administration Research Engineering and Development Advisory Committee to be held Thursday, July 13, 1995, 10 a.m. to 5 p.m. and continuing on Friday, July 14, 1995, 8:30 a.m. to 4 p.m. The meeting will take place in Boston, Massachusetts at MIT/LL.

The agenda for this meeting will include Weather Program overview at WSI, Inc. and a tour of Phillips Lab on Thursday and a tour, demo, discussion, and breakout sessions at MIT/LL on Friday.

Attendance is open to the interested public but limited to the space available. With the approval of the subcommittee chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or attend the meeting should contact Mr. Carl McCullough, ASD–110, 800 Independence Avenue, SW, Washington, DC at (202) 358–5291, who will serve as the FAA Designated Federal Official to the Subcommittee.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on June 23, 1995.

Clyde A. Miller,

Coordinator for the R, E&D Advisory Committee.

[FR Doc. 95–15990 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Free Flight Implementation Task Force

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Free Flight Implementation Task Force meeting to be held July 19 and 20, 1995. The meeting will be held at ARINC, 2551 Riva Road, Annapolis, Maryland.

The meeting on Wednesday, July 19, will begin at 9:00, when the Task Force Chairman and Working Group Co-Chairs will review Task Force objectives and status.

The agenda for the remainder of July 19 and all of July 20 will be separate and concurrent Working Group deliberations.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on June 23, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15993 Filed 6–28–95; 8:45 am]

BILLING CODE 4810–13–M

RTCA, Inc.; Joint Special Committee 181/Eurocae WG–13 Standards of Navigation Performance

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee 181/EUROCAE WG–13 meeting to be held July 17–20, 1995, starting at 9:00 a.m. The meeting will be held at the Experimental Aircraft Association (EAA) Aviation Center, Oshkosh, Wisconsin.

The agenda for Monday, July 17, will include the following: (1) Introductions; (2) Chairman's Remarks and Review of Agenda; (3) Review and Approval of Minutes of Previous Meeting (RTCA Paper No. 348–95/SC181–049); (4) Briefing: Role of the Editorial Group; (5) Review of Amendments of European Basic RNAV Advisory Material AMJ 20x2; (6) Working Group Sessions.

The agenda for Tuesday and Wednesday, July 18 and 19, will be a continuation of the working group sessions.

On Thursday, July 20, the agenda will include: (1) Working Group Status Reports; (2) Old Business (RNP Less than 1; RNP Types 12.6 and 20; Ground Data Bases); (3) New Business (MASPS & MOPS Schedule; Revised Meeting Locations); (4) Future Meeting Schedule; (5) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax); or Ms. Bonnie Poberezny at the EAA Aviation Center, Oshkosh, Wisconsin; (414) 426–4847 (phone) or (414) 426–6504 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 23, 1995.

Janice L. Peters,

Designated Official.

[FR Doc. 95–15992 Filed 6–28–95; 8:45 am]

BILLING CODE 4810–13–M

Federal Highway Administration

Environmental Impact Statement: Saline County, IL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice of intent to advise the public that an environmental impact statement (EIS) will be prepared for a proposed action in Saline County, Illinois. The proposed action considers the replacement or reconstruction of U.S. Route 45 between Harrisburg and Eldorado and the possible construction of a bypass of the City of Harrisburg. The potential bypass would connect Illinois Route 13 to U.S. Route 45 east of the city. The study area for the project begins at a point on new Illinois Route 13 west of Harrisburg and extends northeasterly to the intersection of U.S. Route 45 with Illinois Route 142 in Eldorado. The estimated length of the proposed project is 13.8 kilometers (8.6 miles).

FOR FURTHER INFORMATION CONTACT: Mr. Walter C. Waidelich, Jr., Design Operations Engineer, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Telephone: (217) 492–1622; Mr. Karl Bartelsmeyer, District Engineer, Illinois Department of Transportation, District 9, Old Route 13 West. P.O. Box 100, Carbondale, Illinois 62903–0100, Telephone: (618) 549–2171.

SUPPLEMENTARY INFORMATION: Existing U.S. Route 45 is a north/south route that runs along the eastern edge of Harrisburg. Existing Illinois Route 13 runs through the center of Harrisburg, intersecting with U.S. Route 45 on the east edge of the city. The proposed action would replace or reconstruct U.S. Route 45 between Harrisburg and Eldorado and possibly construct a four lane bypass of the City of Harrisburg. The potential bypass would begin at a point on new Illinois Route 13 west of Harrisburg and intersect with U.S. Route 45 east of the city. The estimated length of the proposed project is 13.8 kilometers (8.6 miles), and would be designed as a rural, four-lane expressway with two 7.6 meter (24 feet) wide pavement separated by a 15 meter (50 feet) wide median. The proposed roadway would be partially access controlled. No direct commercial access would be allowed.

From Harrisburg to Eldorado, existing U.S. Route 45 experiences congestion, with the amount of traffic meeting the warrants for consideration of a four-land highway. Within Harrisburg, Illinois Route 13 also experiences congestion, especially at the existing intersection with U.S. Route 45 in town. Upgrading U.S. Route 45 from Harrisburg to Eldorado and upgrading Illinois Route 13 from west of Harrisburg to U.S. Route 45 or constructing a bypass of Harrisburg would provide continuity of the regional highway system; relieve congestion between the two cities and at critical locations within Harrisburg; improve safety; and provide increased opportunities for development through better access to this economically depressed area of southeastern Illinois. Alternatives to be considered include a no action alternative, reconstruction of the existing facility, construction of a new facility on new alignment, and construction of a bypass of Harrisburg.

The scoping process undertaken as part of this project will include distribution of a scoping information packet; coordination with federal, state and local agencies; and review sessions as appropriate. A formal scoping meeting will not be held. Further details and a scoping information packet may be obtained from one of the contact persons listed above.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to FHWA or IDOT at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Walter C. Waidelich, Jr.,

Design Operations Engineer, Federal Highway Administration, Illinois Division, Springfield, Illinois.

[FR Doc. 95–15920 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–22–M

National Highway Traffic Safety Administration

[Docket No. 95–20; Notice 2]

Child Safety Seats; Agreement Between General Motors and U.S. Department of Transportation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice; request for certifications.

SUMMARY: This notice describes an agreement between General Motors (GM) and the U.S. Department of Transportation (DOT), under which GM has agreed to donate funds to one or more qualified national organizations for the purchase and distribution of child safety seats. Organizations that wish to receive such funds are required to certify in writing that they are qualified, in accordance with criteria established in the agreement. To qualify, organizations must demonstrate that they are national in scope, and they must submit a plan showing they are prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. They must also meet other requirements. Organizations are strongly encouraged to form partnerships and work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

This notice requests that organizations submit certifications and it describes the criteria they must meet and the information they must submit with their certifications to be eligible to receive these funds. A similar notice was published in the **Federal Register** on March 31, 1995. As a result of that notice, six organizations were determined by NHTSA to be qualified and were selected by GM to receive a total of $2 million for the purchase and distribution of child safety seats. As a

result of today's notice, organizations will be determined by NHTSA to be qualified and selected by GM to receive additional donations for the purchase and distribution of child safety seats under the settlement agreement.

DATES: Certifications must be received no later than September 27, 1995.

ADDRESSES: Certifications should be submitted to: Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Gorcowski, National Organizations Division, NTS–11, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone (202) 366–2683.

SUPPLEMENTARY INFORMATION:

DOT/GM Settlement Agreement

On December 2, 1994, Secretary of Transportation Federico Peña announced that DOT and GM had agreed in principle to a resolution of the investigation by the National Highway Traffic Safety Administration (NHTSA) into an alleged defect related to motor vehicle safety in certain 1970–1991 GM C/K pickup trucks. The terms of the resolution were finalized in a separate agreement that was executed between GM and DOT on March 7, 1995.

Under the terms of the agreement, GM agreed to provide funds over a period of five years to support highway safety research and programs that will prevent motor vehicle deaths and injuries.

In the area of child safety, GM agreed to donate $8,000,000 to qualified organizations for the purchase and distribution of child safety seats. The agreement provided that, of this amount, $4,000,000 will be donated during the first year after the date of the agreement (approximately $1,000,000 each quarter) and $4,000,000 will be donated over the next four years (approximately $1,000,000 in each year). The seats will be directed to underserved low income and special needs populations.

The agreement between GM and DOT provides:

> DOT shall identify, on an ongoing basis so as to facilitate timely GM donations, qualified organizations which DOT in its sole discretion deems appropriate to receive donations from GM for the purchase and distribution of child safety seats. GM, in its sole discretion, shall select from the list of qualified organizations provided by DOT, the organization(s) to which it will donate funds, and shall decide the exact amount of funds that each such organization will receive.

The agreement provides further that any organization that is interested in being identified as a ''qualified organization'' must certify to DOT in writing that it will meet a number of criteria set forth in the agreement.

NHTSA estimates that these funds will allow for the purchase and distribution of between 125,000 and 200,000 child safety seats for needy families which, in turn, will save at least 50 lives and prevent approximately 6,000 injuries.

Child Safety

There are approximately 25 million young children under the age of eight years old who need the protection of child safety seats. One fourth of these children come from families that are below the poverty level.

As many as 3 million children in low-income families do not have access to adequate child safety seats. An additional 3 million children or more have access to child safety seats but, for a variety of reasons, are not being secured in these seats properly. Additionally, children with special transportation needs, such as children with disabilities, often require uniquely designed child safety seats that are too expensive for most families of low or average income to afford.

For these and other reasons, millions of children ride each day either unprotected or inadequately protected by child safety seats. A disproportionate number of these children are from low income or rural families or from culturally diverse populations.

To increase child safety seat usage, child safety seats must be made more readily available, particularly to underserved low income and special needs families. These families must also be motivated to use child safety seats and educated about their proper usage.

An effective child safety seat program can reach, and have a major positive impact on, large numbers of children as well as their families. To be most effective, however, the program must ensure that seats are distributed primarily to the populations most at risk, including underserved low income and special needs families. If programs do not target these populations, the seats could be provided instead to families that could otherwise afford to purchase them, with little net benefit.

First Notice

On March 31, 1995, NHTSA published a notice in the **Federal Register** describing the agreement between GM and DOT and requesting that organizations interested in receiving funds certify in writing that they are qualified. NHTSA received over 20 certifications in response to the notice.

Copies of the March 31 notice and the certifications received in response have been placed in NHTSA's Technical Reference Library (TRL), Docket Section, under Docket Number 95–20; Notice 1. Individuals that wish to order a copy of these materials may do so by calling or writing to the TRL at Room 5108, 400 Seventh St., SW, Washington, D.C. 20590 (telephone number 202–366–2768) and referencing this docket number. A fee may be charged, based on the volume of material that is requested.

The certifications that NHTSA received in response to the notice were reviewed by an evaluation panel of experienced NHTSA personnel, who determined whether the certifications met each of the required criteria and evaluated the certifications based on the evaluation factors specified in the notice.

The panel determined that six organizations were qualified to receive donations from GM: National SAFE KIDS Campaign, National Safety Council (NSC), International Association of Chiefs of Police (IACP), National Easter Seal Society, Safe America Foundation/Operation Baby Buckle and the State and Territorial Injury Prevention Directors Association (STIPDA).

GM decided that each of these organizations would receive donations for the purchase and distribution of child safety seats under the settlement agreement. GM donated $1.5 million to SAFE KIDS to coordinate a major child safety seat program with three other qualified organizations (NSC, IACP and STIPDA), and specified that half of the child safety seats purchased by SAFE KIDS will be divided equally among NSC, IACP and STIPDA, to be distributed through their channels. GM also donated $400,000 to the National Easter Seal Society for its unique program that reaches ''special needs'' infants and children and $100,000 to Operation Baby Buckle for the distribution of seats and its active public education and car safety seat awareness programs.

Today's Notice

Today's notice describes the criteria that an organization must meet, and the information it must submit with its certification, to be identified by DOT as a ''qualified organization.'' Certifications must be received no later than 90 days after the date of publication of today's notice in the **Federal Register**.

NHTSA will convene a panel of experienced agency personnel to evaluate the certifications submitted. The members of the panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the evaluation factors specified in this notice. When the panel completes its review of the certifications, it will prepare a list of organizations it has determined are qualified and appropriate to receive donations for the purchase and distribution of child safety seats. NHTSA will provide the list to GM and place it in the public docket.

This list of organizations will be used by GM during the third and fourth quarters of the first year after the date of the agreement, during which time GM will donate approximately $2 million for the purchase and distribution of child safety seats.

Within approximately six months from the date of publication of today's notice, NHTSA plans to publish a third notice in the **Federal Register** requesting certifications from organizations that wish to receive donations after the first year. Any organization that wishes to be included on the third list, whether or not the organization was included on the first and/or the second list, must submit a certification. NHTSA reserves the right to request at that time the submission of additional information, not identified in today's **Federal Register** notice, from organizations seeking to be included on the third list.

Based on its review of the certifications received in response to the third **Federal Register** notice, NHTSA will prepare a revised list of organizations that have been determined to be qualified and appropriate to receive future donations from GM. (As explained earlier, GM will donate a total of approximately $4 million during the following four-year period, $1 million during each year.)

NHTSA may, from time to time, publish additional notices requesting certifications and prepare additional revised lists of qualified organizations, if it determines it is appropriate to do so.

Certification Criteria

In order to be identified as a ''qualified organization,'' an organization must certify in writing that it shall meet eleven separate criteria. It must also provide information demonstrating that it meets these criteria. The criteria, and the information that organizations must submit to demonstrate compliance, are described below:

(1) Work Through Affiliates

The organization must certify in writing that it shall:

> Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs.

Organizations must be national in scope and have established and effective affiliate relationships at the state or local level capable of carrying out the effort. Organizations can satisfy this criterion by showing that they will work through their own state or local affiliates (i.e., units or chapters specifically organized to carry out the organization's mission) or with other affiliates (i.e., state or locally-based child safety-related agencies or organizations, such as children's hospitals or fire and rescue agencies), and by showing that they have commitments from these state or local affiliates.

Organizations that wish to participate in this program, and are state or locally-based rather than national in scope, are encouraged to affiliate with a national organization that plans to submit a certification or to encourage a national organization with which they are already affiliated to submit a certification.

Through these affiliates, organizations must have a network that will enable them to identify families of target populations who have not been reached through traditional channels, including families who could not otherwise afford seats or who have special needs, and to distribute seats and provide education to these families.

Organizations must submit information regarding their structure and a designation of geographic locations of state and local affiliates that are expected to be involved in the effort. Organizations must also submit information regarding the organizations and agencies with which they will be affiliated for purposes of this program. In addition, organizations must describe their relationships with affiliates, including the role that affiliates will play, and they must demonstrate that they have commitments from affiliates (such as by submitting letters of commitment).

(2) Existing Program or Trained Staff

The organization must certify in writing that it shall:

> Have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues.

Organizations must have experience, either directly or through their affiliates, with a loaner or give-away program or staff trained in child passenger safety issues. Alternatively, organizations may collaborate with organizations that have such experience or trained staff, either directly or through their affiliates. National organizations that have the ability to reach underserved populations, but do not have experience with a child safety seat program or trained staff, for example, are strongly encouraged to collaborate with one or more national organizations that do. The experience or training is necessary to ensure that organizations, and their affiliates, are able to operate child safety seat programs, and to meet the deadlines and requirements established in the agreement for distributing seats and providing education to the recipients of the seats.

Organizations must describe their existing loaner or give-away child safety seat programs and their experience in providing education on the use of child safety seats. They must also describe existing loaner or give-away programs and experience in providing education of agencies or organizations that are affiliated with them or with which they have collaborative relationships.

Organizations must identify the number of current trained staff (of the organization, its affiliates and its collaborators) and provide a description of training conducted or taken by the staff and the dates of last training. If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, the organizations should describe their plans for training the staff.

If organizations plan to work collaboratively, they should submit a single combined certification. The certification must include letters of commitment from all collaborators.

Organizations are advised that NHTSA has trained hundreds of individuals throughout the country in child passenger safety issues. If organizations are interested in receiving assistance from individuals who have received NHTSA training, they should contact one of NHTSA's ten regional offices, or the Governor's Highway Safety Representative in their State. Organizations must keep in mind, however, that they must be prepared to purchase and distribute child safety seats within 120 days of their receipt of the funds. Accordingly, their staff must be trained within the 120-day period.

(3) Low-Income or Special Needs Across Broad Geographic Area

The organization must certify in writing that it shall:

Distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States.

The intent of this provision is to assure that underserved children from culturally diverse populations throughout the United States receive the benefits of the program. Qualified organizations need not distribute seats in every state. However, as stated previously, they must have a program that is national in scope and reaches their target populations throughout the United States.

Organizations must submit their mission statements, a description of the method they will use to identify underserved low income or special needs families, and a list of the geographic locations that would be targeted for receipt of the seats. They must demonstrate the ability to identify underserved low income and special needs families, and the ability to distribute seats to these families at the community level throughout the United States.

(4) Mix of Child Safety Seats

The organization must certify in writing that it shall:

Comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs).

Children of differing ages and transportation needs require different types of child safety seats. The intent of this provision is to assure that the children who are recipients under this program receive seats that meet their needs. The provision is also intended to assure that organizations purchase the correct mix of seats for their target population.

Organizations will need to identify the ages and transportation needs of the intended recipients and the types of seats needed to properly fit the target group. For example, an organization targeting special needs children may need very specialized seats, while a program targeting older children may need convertible toddler and booster child restraint devices.

Organizations must specify the maximum number of seats they are capable of distributing to local agencies (their affiliates) within 120 days of their receipt of the funds and the amount of funding they are requesting from GM to purchase and distribute this number of seats. Organizations must specify the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats), and must describe the method used to derive the mix. They should indicate whether the mix would change if they receive less funding than the full amount requested.

Organizations should also indicate whether they plan to operate a loaner or a give-away program and what fees, if any, they intend to charge. Both types of programs are acceptable. Any fees charged to recipients must be nominal, and any income from these fees must be used for the purchase and distribution of additional child safety seats under the agreement.

(5) Within 120 Days

The organization must certify in writing that it shall:

Distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds.

Organizations are required, under the agreement, to purchase and distribute all of the seats to local agencies (their affiliates) within 120 days of receipt of the funds. To satisfy this criterion, organizations must clearly demonstrate the ability to meet this requirement.

As stated previously, organizations must submit a plan describing how they will accomplish the purchase and distribution of seats to local agencies (their affiliates) within the 120-day period. The plan must describe how the organization will reach a broad geographical area, how it will identify the low income and special needs families to be served by this program, and it must include a proposed schedule for the purchase and distribution of seats. The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the **Federal Register** notice published on March 31, 1995, must also describe the progress they have made, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

Organizations must also demonstrate that the distribution and education efforts funded under this program will either create new initiatives or complement (rather than duplicate) existing initiatives, in the geographic areas to be served. In other words, these distribution and education efforts should take place in communities that have either been underserved or not been reached. In addition, organizations must ensure that their efforts do not conflict with activities already planned or underway. This may be demonstrated by including in the plan, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

(6) Educate Recipients

The organization must certify in writing that it shall:

Educate recipients of the seats as to methods of proper installation and use.

While the distribution of child safety seats is vitally important, and can save many children's lives, the effectiveness of those seats in preventing injury and death increases significantly when recipients are trained in and follow proper use and installation instructions. Organizations are required, under the agreement, to provide education to the recipients of the seats regarding the proper installation and use of child safety seats. Education is most effective if it is provided at the time that the seats are being distributed to recipients, and if it includes a number of components, such as conducting a hands-on demonstration, showing a video and having recipients demonstrate that they understand how to properly install and use their child safety seats.

Organizations must describe the specific means they, their affiliates or their collaborators will use to educate families about the proper installation and use of child safety seats.

To assist in this effort, NHTSA will make resources, including materials and technical assistance, available to the selected organizations.

(7) Administrative Expenses

The organization must certify in writing that it shall:

Not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats.

Organizations shall use no more than 10 percent of the funds provided by GM for administrative expenses related to

the distribution of the seats. Examples of administrative expenses include operational overhead such as secretarial support, telephone expenses, and time of paid staff to help develop the plans for these efforts.

As stated previously, organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification. Any such certification submitted for a group of organizations working collaboratively, must include a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be used for administrative expenses will be allocated among the organizations. The actual agreement need not be provided. No additional information is required to be submitted at this time in support of this element of the certification.

(8) Added to Existing Funds and No Diversions

The organization must certify in writing that it shall:

Add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities.

Organizations shall add the GM-provided funds to the total of their existing funds, if any, spent on the distribution of child safety seats to low income and special needs families and not divert any funds currently budgeted to such activities, if any, to other activities. In other words, the funds provided by GM must represent new and additional resources, and may not be used to replace other funds, if any, that otherwise would have been used for the distribution of child safety seats to low-income families and their related education activities. No additional information is required to be submitted at this time in support of this element of the certification.

(9) Third-Party Audit

The organization must certify in writing that it shall:

Allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT.

Organizations shall allow the activities conducted pursuant to this program to be audited by such third party as may be selected by DOT. Organizations shall also maintain adequate records to allow an audit to be conducted. No additional information is required to be submitted at this time in support of this element of the certification.

(10) Enforceable Commitments and Promises

The organization must certify in writing that it shall:

Acknowledge and agree that such commitments and promises shall be enforceable.

Organizations shall acknowledge and agree that the commitments and promises they make shall be enforceable through legal process or other appropriate means. No additional information is required to be submitted at this time in support of this element of the certification.

(11) No Assumption of Responsibility

The organization must certify in writing that it shall:

Acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

Organizations shall acknowledge and agree that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use. No additional information is required to be submitted at this time in support of this element of the certification.

Evaluation Factors

Certifications will be reviewed by an evaluation panel of experienced agency personnel. The panel will determine whether the certifications meet each of the required criteria and will evaluate the certifications based on the following factors:

1. Understanding of the requirements of the agreement and soundness of approach as shown by the organization's plan and certification.

2. The ability to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds as shown by the organization's plan and certification.

3. The ability to identify underserved low income and special needs families.

4. The ability to distribute child safety seats to these target populations at the community level throughout the United States.

- The experience of the organization, its affiliates or its collaborators, in distributing child safety seats
- The breadth and diversity of the underserved population the organization, its affiliates or its collaborators can effectively reach

5. The ability to provide education to recipients.

- The experience of the organization, its affiliates or its collaborators, in providing education on the use of child safety seats
- The level of training of the staff of the organization, its affiliates or its collaborators

6. The ability to conduct a distribution and education program that either creates new initiatives, or complements (rather than duplicates) existing initiatives, in the geographic areas to be served.

Certification Procedures

To be considered, certifications must be received no later than 90 days after the date on which today's notice is published in the **Federal Register**. Certifications should be submitted to Office of Occupant Protection, NTS–11, Room 5118, 400 Seventh Street, S.W., Washington, D.C. 20590.

Organizations are strongly encouraged to work collaboratively for the purpose of applying for funds. If organizations plan to work collaboratively, they should submit a single combined certification.

Certifications must include each of the following:

(1) Certification Statement

A written statement, signed by an authorized official of the organization, certifying that the organization shall:

(i) Work, through its state or local affiliates, with agencies such as children's hospitals and health agencies to identify families who could not otherwise afford seats or who have special needs; (ii) have an existing loaner or give-away child safety seat program or have staff trained in child passenger safety issues; (iii) distribute the seats to low-income families and/or families with special needs across a broad geographical area throughout the United States; (iv) comply with NHTSA guidelines with respect to the approximate mix of child safety seats (e.g., infant, toddler, booster, special needs); (v) distribute all of the seats purchased with the funds provided by GM to the local agencies within 120 days of the receipt of the funds; (vi) educate recipients of the seats as to methods of proper installation and use; (vii) not use more than 10 percent of the funds provided by GM for administrative expenses related to distribution of the seats; (viii) add the GM-provided funds to the total of its existing funds spent on the distribution of child safety seats to low-income families and not divert any funds currently budgeted to such activities to other activities; (ix) allow the activities conducted pursuant to this program to be audited by such third party as selected by DOT; (x) acknowledge and agree that such commitments and promises shall be enforceable; and (xi) acknowledge and agree

that GM does not assume or bear any responsibility for the organization's commitments, the selection of the safety seats actually purchased or distributed, or the education of recipients of the seats as to proper use.

(2) Plan

A plan describing how the organization will accomplish the purchase and distribution of seats to local agencies (their affiliates) within 120 days of receipt of the funds, how the organization will reach a broad geographical area, and how it will identify the low income and special needs families to be served by this program. It must include a proposed schedule for the purchase and distribution of seats, a description of new or complementary initiatives that are planned and either letters of support from the organizations that are (or would be) responsible for child safety seat programs in the geographic areas to be served (such as state highway safety offices and state public health agencies) or a description of the organization's plans to coordinate with these responsible organizations.

The plan must clearly demonstrate that the organization is able and prepared to purchase and distribute child safety seats to local agencies (their affiliates) within 120 days of their receipt of the funds and that, if their staff is not already experienced or trained, that they will be trained within the 120-day period.

Organizations that were selected by GM to receive donations for the purchase and distribution of child safety seats under the settlement agreement as a result of the **Federal Register** notice published on March 31, 1995, must also describe the progress they have made since they received their donations, including the schedule they have followed, the number of seats they have distributed to local agencies (their affiliates) and the number of seats that have been provided to recipients, by geographic location.

(3) Additional Information

The following additional information to ensure that the organization is capable of meeting the objectives of the agreement:

- Information regarding the organization's structure and a designation of geographic locations of state and local affiliates to be involved in the effort;
- Information regarding the organizations and agencies with which the organization will be affiliated for purposes of this program;
- A description of their relationships with affiliates, including the role that affiliates will play, and either letters or some other demonstration of commitment from their affiliates;
- A description of the organization's, its affiliates' or its collaborators': existing loaner or give-away programs; experience in providing education on the use of child safety seats; the number of trained staff; a description of training conducted or taken; and the dates of last training;
- If organizations have staff who have not been trained, but who are capable of being trained in child passenger safety issues, a description of their plans for training the staff and an indication that the training will be completed within 120 days of receipt of the funds;
- If organizations plan to work collaboratively, letters of commitment from all collaborators and a statement that provides that the organizations have reached agreement regarding the manner in which funds that may be used for administrative expenses will be allocated among the organizations (the actual agreement need not be provided);
- A mission statement of the organization;
- The method to be used to identify underserved low income or special needs families;
- A list of the geographic locations that would be targeted for receipt of the seats;
- The maximum number of seats the organization is capable of distributing to local agencies (their affiliates) within 120 days of its receipt of the funds; the amount of funding the organization is requesting from GM to purchase and distribute this number of seats; the proposed mix and types of seats needed to serve the age and needs of the populations to be targeted (i.e., 25% booster seats, 50% toddler seats, 20% infant seats and 5% special needs seats); the method used to derive the mix; and, if applicable, any change in mix if the organization receives less funding than the full amount requested;
- An indication of whether the organization plans to operate a loaner or a give-away program; an identification of the fees, if any, they intend to charge; and a statement that any income from these fees will be used for the purchase and distribution of additional child safety seats under the agreement; and
- A description of the specific means to be used by the organization, its affiliates or its collaborators to educate families about the proper installation and use of child safety seats.

Organizations must submit one original and two copies of their certifications. Certifications shall be subject to 18 U.S.C. 1001, which prohibits the making of false statements. Organizations are requested to submit four additional copies to facilitate the review process, but there is no requirement or obligation to do so. Organizations that would like to be notified upon receipt of their certifications should enclose a self-addressed stamped postcard in the envelope with their certifications. Upon receiving the certifications, the postcard will be returned by mail.

Issued on: June 26, 1995.

James Hedlund,

Acting Associate Administrator for Traffic Safety Programs.

[FR Doc. 95–15987 Filed 6–28–95; 8:45 am]

BILLING CODE 4910–59–P

Sunshine Act Meetings

Federal Register

Vol. 60, No. 125

Thursday, June 29, 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).

UNITED STATES POSTAL SERVICE

Board of Governors

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, July 11, 1995, in Washington, D.C. The meeting is open to the public and will be held at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, July 10, 1995, but it will consist entirely of briefings and is not open to the public.

Tuesday Session

July 11—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, June 5–6, 1995.
2. Remarks of the Postmaster General/Chief Executive Officer. (Marvin Runyon)
3. Report on Safety Awareness Program. (Larry B. Anderson, Manager, Safety and Risk Management)
4. Environmental Overview. (William J. Dowling, Vice President, Engineering)
5. Capital Investments.
   a. Bulk Mail Centers (BMCs) Process Control Systems Replacement (Info. Briefing). (William J. Bowling, Vice President, Engineering)
   b. 47 Small Parcel and Bundle Sorters (Final Decision). (William J. Dowling, Vie President, Engineering)
6. Tentative Agenda for the July 31-August 1, 1995, meeting in Denver, Colorado.

David F. Harris,

Secretary.

[FR Doc. 95–16167 Filed 6–27–95; 2:24 pm]

BILLING CODE 7710–12–M

Federal Register

Thursday
June 29, 1995

Part II

Environmental Protection Agency

40 CFR Part 110, et al.
Federal Regulatory Review; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 110, 259, 261, 266, 267, 270, 271, 300 and 373

[FRL–5224–1]

Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing from the Code of Federal Regulations (CFR) several sections of the CFR pertaining to solid waste, hazardous waste, oil discharges and EPA's Superfund program which are no longer legally in effect. Deleting these sections from the CFR will clarify the legal status of the Agency's regulations for both the regulated community and the public.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Jim O'Leary (202–260–0724), Office of Solid Waste, or Jim Fary (703–603–8899), Office of Emergency and Remedial Response, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, or the RCRA/Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 et seq.), and the Deepwater Ports Act (DWPA) (33 U.S.C. 1501 et seq.). Based on this review, EPA is eliminating the following obsolete RCRA, CERCLA and DWPA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute, or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

II. Obsolete Rules

Section 110.11 Discharge at Deepwater Ports

Section 18 of the DWPA prohibits the discharge of oil from a deepwater port and establishes liability for the clean-up of oil discharges. On April 2, 1987, EPA issued a regulation defining the term ''discharge of oil'' for purposes of Section 18.

On August 18, 1990, Section 18 was repealed by Section 2003(a)(3) of the Oil Pollution Act of 1990. Accordingly, EPA is removing from the CFR its definition of ''discharge of oil'' under Section 18.

Part 259—Standards for the Tracking and Management of Medical Waste

The Medical Waste Tracking Act of 1988 (Subchapter J of RCRA) required EPA to promulgate regulations for tracking and managing medical waste as part of a two-year Federal demonstration program under the Act. The required regulations were issued by EPA on March 24, 1989, and became effective on July 22, 1989.

On July 22, 1991, in accordance with both the Act and the regulations issued by EPA, the two-year demonstration program expired. See RCRA §§ 11001(d) and 40 CFR 259.2(a). All Federal medical waste regulations also expired at that time, with the exception of recordkeeping provisions; those provisions required regulated entities to retain certain records for three years (or longer, if EPA or a State has initiated an enforcement action). See 40 CFR 259.2(b), § 259.54, § 259.77, and § 259.83. This three-year record retention period has now also expired, and EPA is unaware of any pending Federal or State enforcement action regarding Federal medical waste requirements. Accordingly, EPA is removing these medical waste regulations from the CFR.

Section 261.31 Hazardous Wastes From Non-Specific Sources

On February 6, 1991, EPA issued regulations listing certain wood preserving wastes as hazardous wastes. The Agency was sued on these listings, and in response, temporarily stayed the effective date of its listing decision. See § 261.31(a), footnote 1. This stay expired on May 6, 1992. Accordingly, EPA is removing all references to this stay from the CFR.

Section 266.104(f) Alternative HC [hydrocarbon] Limit for Furnaces With Organic Matter in Raw Material

On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards—set forth in 40 CFR 266.104(f)—was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it difficult for the facility to meet one of the other two alternatives.

On February 22, 1994, in *Horsehead Resource Development Co.* v. *Browner*, 16 F.3d 1246 (D.C. Cir. 1994), *cert. denied sub nom. Cement Kiln Recycling Coalition* v. *Browner*, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated it. Accordingly, EPA is removing this standard and all references to this standard from the CFR.

Part 267—Interim Standards for Owners and Operators of New Hazardous Waste Land Disposal Facilities.

RCRA prohibits the treatment, storage or disposal of hazardous waste without a permit or interim status. RCRA §§ 3005(a) and 3005(e). Prior to 1984, permits could not be issued for a particular management practice unless EPA had promulgated permitting standards for that activity. RCRA § 3005(c)(1).

At the end of 1980, EPA had not yet issued final standards for permitting hazardous waste land disposal facilities. This meant that new land disposal facilities, which could not qualify for interim status [1], could not be authorized to operate. To address this problem, on February 13, 1981, EPA issued interim permitting standards for new land disposal facilities that could be used to permit new facilities pending the development of final standards.

By their own terms, these interim standards expired on January 26, 1983, when final permitting standards for land disposal facilities (contained in 40 CFR Part 264, Subparts K–N) became effective. See 40 CFR 267.3.

[1] ''Interim status'' allows *existing* facilities that make appropriate filings to continue to operate pending a final permit decision. See RCRA § 3005(e).

Accordingly, EPA is removing these regulations from the CFR.

Various Provisions in Parts 270 and 271 Relating to Interim Authorization of State Hazardous Waste Programs.

Under RCRA § 3006, States can be authorized to administer the RCRA hazardous waste program in lieu of EPA. As originally enacted in 1976, RCRA provided for two types of State authorization—interim authorization and final authorization. RCRA §§ 3006(b) and (c). Interim authorization is a temporary authorization and requires that States demonstrate that their program is ''substantially equivalent'' to EPA's; final authorization is a permanent authorization and requires that States show that their program is ''equivalent'' to the Federal program and meets other requirements.

In 1984 Congress amended RCRA to limit the availability of interim authorization after January 26, 1986 to requirements and prohibitions mandated by the Hazardous and Solid Waste Amendments of 1984 (HSWA). RCRA § 3006(c)(1). Accordingly, EPA is removing from the CFR all references to interim authorization for non-HSWA requirements (including references to ''Phase I'' and ''Phase II'' non-HSWA interim authorization).

Part 300—National Oil and Hazardous Substances Pollution Contingency Plan; Subpart L—Lender Liability Under CERCLA.

On April 29, 1992, EPA issued a rule defining when banks and other secured creditors would be liable as ''owners'' of contaminated property under CERCLA. In *Kelley* v. *EPA*, 15 F.3d 1100 (D.C. Cir. 1993), *reh. denied*, 25 F.3d. 1088 (D.C. Cir. 1994), *cert. denied*, 115 S. Ct. 900 (1995), a Federal court of appeals ruled that EPA did not have statutory authority to issue the rule and vacated it. Accordingly, EPA is removing this rule from the CFR.

Section 373.1 (General Requirement)

Section 120(h)(1) of CERCLA requires Federal agencies that own property where hazardous substances have been stored or are known to have been released to notify buyers and lessees of the property. On April 16, 1990, EPA issued a rule under this section which limited the notification requirement to situations where the storage or release took place during the period the property was owned by the Federal agency.

On July 12, 1991, in *Hercules Inc.* v. *EPA*, 938 F.2d 276 (D.C. Cir. 1991), a Federal appeals court held that the Agency had no authority to impose this limitation and vacated it. Accordingly, EPA is removing this provision from the rule.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures.

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a ''significant'' regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 110

Environmental protection, Deepwater ports, Oil pollution.

40 CFR Part 259

Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Labeling, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 261

Hazardous waste, Wood preserving wastes.

40 CFR Part 266

Boilers and industrial furnaces, Hazardous waste.

40 CFR Part 267

Air pollution control, Hazardous waste, Water supply.

40 CFR Parts 270 and 271

Hazardous waste, Intergovernmental relations, Interim authorization.

40 CFR Part 300

Hazardous substances, Lender liability, Superfund.

40 CFR Part 373

Federal buildings and facilities, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: June 14, 1995.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 is amended to read as follows:

Authority: 33 U.S.C. 1321(b)(3) and (b)(4) and 1361(a); E.O. 11735, 38 FR 21243, 3 CFR Parts 1971–1975 Comp., p. 793.

§ 110.11 [Removed]

2. Section 110.11 is removed.

PART 259—[REMOVED]

3. Part 259 is removed.

PART 261—[AMENDED]

4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922 and 6938.

§ 261.31 [Amended]

5. In § 261.31(a), footnote 1 is removed.

PART 266—[AMENDED]

6. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6934.

7. In § 266.103, paragraph (c)(5) is revised to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(c) * * *

(5) *Special requirements for HC monitoring systems.* When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section.

* * * * *

§ 266.104 [Amended]

8. In § 266.104 paragraph (f) is removed, and paragraphs (g), (h) and (i) are redesignated as paragraphs (f), (g) and (h), respectively.

PART 267—[REMOVED]

9. Part 267 is removed.

PART 270—[AMENDED]

10. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939 and 6974.

11. In § 270.2, the definitions of ''Phase I'' and ''Phase II'' are removed and the definition of ''Interim Authorization'' is revised to read as follows:

§ 270.2 Definitions.

* * * * *

Interim authorization means approval by EPA of a State hazardous waste program which has met the requirements of section 3006(g)(2) of RCRA and applicable requirements of part 271, subpart B.

* * * * *

12. In § 270.10, paragraphs (e)(4), (f)(2) and (g)(1) are revised to read as follows:

§ 270.10 General application requirements.

* * * * *

(e) * * *

(4) The owner or operator of an existing hazardous waste management facility may be required to submit part B of their permit application. The State Director may require submission of part B (or equivalent completion of the State RCRA application process) if the State in which the facility is located has received interim or final authorization; if not, the Regional Administrator may require submission of Part B. Any owner or operator shall be allowed at least six months from the date of request to submit part B of the application. Any owner or operator of an existing hazardous waste management facility may voluntarily submit part B of the application at any time. Notwithstanding the above, any owner or operator of an existing hazardous waste management facility must submit a part B permit application in accordance with the dates specified in § 270.73. Any owner or operator of a land disposal facility in existence on the effective date of statutory or regulatory amendments under this Act that render the facility subject to the requirement to have a RCRA permit must submit a part B application in accordance with the dates specified in § 270.73.

* * * * *

(f) * * *

(2) An application for a permit for a new hazardous waste management facility (including both Parts A and B) may be filed any time after promulgation of those standards in part 264, subpart I *et seq.* applicable to such facility. The application shall be filed with the Regional Administrator if at the time of application the State in which the new hazardous waste management facility is proposed to be located has not received interim or final authorization for permitting such facility; otherwise it shall be filed with the State Director. Except as provided in paragraph (f)(3) of this section, all applications must be submitted at least 180 days before physical construction is expected to commence.

* * * * *

(g) *Updating permit applications.* (1) If any owner or operator of a hazardous waste management facility has filed Part A of a permit application and has not yet filed part B, the owner or operator shall file an amended part A application:

(i) With the Regional Administrator if the facility is located in a State which has not obtained interim authorization or final authorization, within six months after the promulgation of revised regulations under part 261 listing or identifying additional hazardous wastes, if the facility is treating, storing or disposing of any of those newly listed or identified wastes.

(ii) With the State Director, if the facility is located in a State which has obtained interim authorization or final authorization, no later than the effective date of regulatory provisions listing or designating wastes as hazardous in that State in addition to those listed or designated under the previously approved State program, if the facility is treating, storing or disposing of any of those newly listed or designated wastes; or

(iii) As necessary to comply with provisions of § 270.72 for changes during interim status or with the analogous provisions of a State program approved for final authorization or interim authorization. Revised Part A applications necessary to comply with the provisions of § 270.72 shall be filed with the Regional Administrator if the State in which the facility in question is located does not have interim authorization or final authorization; otherwise it shall be filed with the State Director (if the State has an analogous provision).

* * * * *

PART 271—[AMENDED]

13. The authority citation for part 271 is amended to read as follows:

Authority: 42 U.S.C. 6905, 6912 and 6926.

§ 271.3 [Amended]

14. In § 271.3, paragraphs (c), (d) and (e) are removed, and paragraph (f) is redesignated as paragraph (c).

15. In § 271.20, paragraph (e) is revised to read as follows:

§ 271.20 Approval process.

* * * * *

(e) Within 90 days of the notice given pursuant to paragraph (d) of this section, the Administrator shall make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator shall give notice of this final determination in the **Federal Register** and in accordance with paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

§§ 271.121–271.138 [Removed]

16. Subpart B (§§ 271.121 through 271.138) is removed.

PART 300—[AMENDED]

17. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR 187 Comp., p. 193.

§§ 300.1100 and 300.1105 [Removed]

18. Subpart L (§§ 300.1100 and 300.1105) is removed.

PART 373—[AMENDED]

19. The authority citation for part 373 is revised to read as follows:

Authority: 42 U.S.C. 9620.

20. Section 373.1 is revised to read as follows:

§ 373.1 General requirement.

After the last day of the six-month period beginning on April 16, 1990, whenever any department, agency or instrumentality of the United States enters into any contract for the sale or other transfer of real property which is owned by the United States and at which any hazardous substance was stored for one year or more, known to have been released, or disposed of, the head of such department, agency or instrumentality must include in such contract notice of the type and quantity of such hazardous substance and notice of the time at which such storage, release or disposal took place, to the extent such information is available on the basis of a complete search of agency files.

[FR Doc. 95–15028 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 51, 52, 60, 65, 85, 86

[FRL–5224–5]

Control of Air Pollution; Removal of Legally Obsolete Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) more than 200 rules pertaining to air pollution which are no longer legally in effect. Deleting these rules from the CFR will clarify the legal status of these rules for both the regulated community and the public.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Maureen Delaney, Office of Air and Radiation, Office of Policy Analysis and Review, (202) 260–7431.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995, to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.). Based on this review, EPA is today eliminating the following obsolete CAA rules from the CFR. These rules are no longer legally in effect because (1) they implement statutory provisions which have been repealed, (2) they have expired by their own terms or by the terms of the statute or (3) they have been vacated (i.e., declared void and of no effect) by a court.

The removal of these rules from the CFR because they are no longer legally in effect is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred when the rules were still legally in effect.

II. Obsolete Rules

A. Portions of Parts 51 and 52

The following deletions have been divided into three basic types of regulations found in 40 CFR parts 51 and 52: (1) Rules applicable on a national basis, without state-specific counterparts; (2) rules applicable on a national basis, supplemented by state-specific rules that implement them; and (3) rules applicable to a specific state, without national counterparts. This notice looks at each of these types in turn, setting forth the reasons that EPA seeks today to remove them from the CFR.

Any deletion of provisions that state plans currently reference is not intended to disturb those references, and EPA interprets those references to be to the version that was in the CFR when the state adopted the reference, unless the state subsequently provides otherwise.

1. National Rules Without State-Specific Counterparts

The following sets of regulations apply on a national basis, and are not further applied or implemented by any state-specific regulations. EPA has reviewed these rules and found them legally obsolete or superseded for the reasons set forth below. EPA in this notice therefore is removing them from the CFR.

40 CFR 51.105 Approval of plans: first sentence only. The first sentence of § 51.105 provides that the Administrator will approve any state implementation plan (SIP) or portion thereof if she determines that it meets the requirements of the Act. This provision has been superseded by the 1990 CAA provisions under Sections 110 (k) and (l). Accordingly, EPA is removing the first sentence of this section from the CFR.

40 CFR 51.111(a)–(c) Description of control measures. Section 51.111(a)–(c) describes what a control strategy must include, including a description of control measures, schedule for implementation, and copies of laws and a description of administrative procedures used to implement each control measure. These provisions have been superseded by the substantive provisions of Part D of Title I of the CAA, Sections 171 et seq., in conjunction with the completeness criteria in 40 CFR part 51, Appendix V. Accordingly, EPA is removing paragraphs (a), (b), and (c) of § 51.111 from the CFR.

40 CFR 51.113 Time period for demonstration of adequacy. Section 51.113 provides the time periods for a demonstration of the adequacy of a control strategy to attain the primary national ambient air quality standard. This provision has been superseded by the 1977 and the 1990 amendments to the CAA, Sections 110, 172, 177, 181 and 182. These Sections include the details of how nonattainment areas are established, what strategies should be included in plans to show attainment in these areas, and when the plans must be submitted. Accordingly, EPA is removing § 51.113 from the CFR.

40 CFR 51.213(b) Transportation control measures, emission data maintenance. Section 51.213(b) provides that for measures involving inspection, maintenance, or retrofit, data must include the results of an emission surveillance program designed to determine actual average per vehicle emissions reductions attributable to an I/M or retrofit measure. This regulation has been superseded by the I/M rules issued under the 1990 amendments to the CAA, Section 182(a)(2)(B)(2), and EPA regulations at § 51.350 et seq.

40 CFR 51.241(a) Nonattainment areas for carbon monoxide (CO) and ozone: last two sentences only. The last two sentences in § 51.241(a) provide that, in determining the organization responsible for developing a revised SIP for nonattainment areas for ozone and CO, the procedures described in the Section 174 Guidelines issued in December, 1977, and published as appendix U to part 51, shall be consulted. These sentences have been superseded by the 1990 CAA amendments to Section 174, and by new Section 174 guidance, including Transportation & Air Quality Planning Guidelines, July 1992. Accordingly, EPA is removing the last two sentences of § 51.241(a) from the CFR.

40 CFR Part 51 Appendix U CAA Section 174 Guidelines, Guidance on designation of lead planning organizations. 40 CFR part 51, appendix U, contains Guidance on the Designation of Lead Planning

Organizations for Nonattainment Areas, and on Determination of Interagency Responsibilities, and is referenced in § 51.241(a) above. It was jointly issued by EPA and the U.S. Department of Transportation in 1977. This guidance has been superseded by the 1990 amendments to CAA Section 174, and by new guidance issued by EPA, as described above.

40 CFR 52.25 Date for submission of set II CTG regulations. This section sets a January, 1981 date for adoption and submittal of reasonably available control technology (RACT) requirements for sources covered by control technique guidelines (CTGs) issued between January 1978 and January 1979 (Set II CTGs). This regulation is rendered obsolete by Sections 182(a)(2)(A) and 182(b)(2) of the CAA, which establish dates for submitting new RACT measures. Accordingly, EPA is removing § 52.25 from the CFR.

2. National Rules With State-Specific Counterparts

The following set of regulations includes national rules which are further implemented or applied by state-specific regulations. The regulations relate to (a) maintenance of national standards, (b) extensions and attainment dates, and (c) indirect source review. EPA has reviewed these rules and found them legally obsolete or superseded for the reasons set forth below. In this notice EPA therefore is deleting these regulations from the CFR.

For each set of regulations, EPA has set forth first the national rules, followed by the corresponding state-specific rules which implement them.

(a) *Maintenance of National Standards*

(i) National Rules.

40 CFR Part 51, Subpart D: Maintenance of National Standards: §§ 51.40–51.63

(Includes the following rules:)

§ 51.40 Scope
§ 51.41 Air Quality Maintenance Area (AQMA) analysis: Submittal date
§ 51.42 AQMA analysis: Analysis period
§ 51.43 AQMA analysis: Guidelines
§ 51.44 AQMA analysis: Projection of emissions
§ 51.45 AQMA analysis: Allocation of emissions
§ 51.46 AQMA analysis: Projection of air quality concentrations
§ 51.47 AQMA analysis: Description of data sources
§ 51.48 AQMA analysis: Data bases
§ 51.49 AQMA analysis: Techniques description
§ 51.50 AQMA analysis: Accuracy factors
§ 51.51 AQMA analysis: Submittal of calculations
§ 51.52 AQMA plan: General
§ 51.53 AQMA plan: Demonstration of adequacy
§ 51.54 AQMA plan: Strategies
§ 51.55 AQMA plan: Legal authority
§ 51.56 AQMA plan: Future strategies
§ 51.57 AQMA plan: Future legal authority
§ 51.58 AQMA plan: Intergovernmental cooperation
§ 51.59 [Reserved]
§ 51.60 AQMA plan: Resources
§ 51.61 AQMA plan: Submittal format
§ 51.62 AQMA analysis and plan: Data availability
§ 51.63 AQMA analysis and plan: Alternative procedures
§ 52.22(a) Maintenance of national standards

(§ 52.22(b) is also being deleted today as obsolete. It is discussed separately under Section (c) below, Indirect Source Review.)

This group of rules deals with maintenance requirements which required, among other things, the submittal of plans by May, 1978. These provisions were superseded by the 1977 and 1990 amendments to the CAA, which replaced the maintenance scheme embodied in the above-cited regulations. Part D of Title I of the CAA, including Section 175A, establishes an entirely new and different attainment and maintenance regulatory structure, which rendered these regulations obsolete. Accordingly, EPA is removing them from the CFR. By removing these provisions, EPA is not affecting any obligation under Section 110(a)(l) for an area never designated non-attainment under the 1990 CAA to have a plan to maintain the national ambient air quality standards.

(ii) State-Specific Rules.

The following state-specific rules implement the provisions of 40 CFR 51.40–51.63 and 40 CFR 52.22(a), and are therefore obsolete. Accordingly, EPA is removing the following state-specific rules from the CFR. The state specific rules have been grouped by the EPA Region responsible for administering them:

REGION 1 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont)

§ 52.379 Maintenance of national standards
§ 52.1028 Maintenance of national standards
§ 52.1528 Maintenance of national standards
§ 52.2082 Maintenance of national standards
§ 52.2379 Maintenance of national standards

REGION 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

§ 52.1602 Maintenance of national standards
§ 52.1688 Maintenance of national standards
§ 52.2728 Maintenance of national standards
§ 52.2778 Maintenance of national standards

REGION 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

§ 52.431 Maintenance of national standards
§ 52.497 Maintenance of national standards
§ 52.1115 Maintenance of national standards
§ 52.2056 Maintenance of national standards
§ 52.2449 Maintenance of national standards
§ 52.2526 Maintenance of national standards

REGION 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

§ 52.59 Maintenance of national standards
§ 52.529 Maintenance of national standards
§ 52.580 Maintenance of national standards
§ 52.929 Maintenance of national standards
§ 52.1279 Maintenance of national standards
§ 52.1777 Maintenance of national standards
§ 52.2129 Maintenance of national standards
§ 52.2232 Maintenance of national standards

REGION 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

§ 52.735 Maintenance of national standards
§ 52.792 Maintenance of national standards
§ 52.1178 Maintenance of national standards
§ 52.1229 Maintenance of national standards
§ 52.1883 Maintenance of national standards
§ 52.2580 Maintenance of national standards

REGION 6 (Arkansas, Oklahoma, Texas)

§ 52.182 Maintenance of national standards
§ 52.1927 Maintenance of national standards
§ 52.2302 Maintenance of national standards

REGION 7 (Iowa, Kansas, Missouri, Nebraska)

§ 52.832 Maintenance of national standards
§ 52.883 Maintenance of national standards
§ 52.1338 Maintenance of national standards
§ 52.1435 Maintenance of national standards

REGION 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

§ 52.341 Maintenance of national standards
§ 52.1381 Maintenance of national standards
§ 52.1827 Maintenance of national standards
§ 52.2176 Maintenance of national standards
§ 52.2345 Maintenance of national standards
§ 52.2631 Maintenance of national standards

REGION 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam)

§ 52.143 Maintenance of national standards
§ 52.267 Maintenance of national standards
§ 52.631 Maintenance of national standards
§ 52.2674 Maintenance of national standards
§ 52.2826 Maintenance of national standards

REGION 10 (Alaska, Idaho, Oregon, Washington)

§ 52.682 Maintenance of national standards
§ 52.1986 Maintenance of national standards

(b) *Extensions and Attainment Dates*

(i) National Rule: § 51.340 Request for 2-year extension.

Section 51.340 provides that the Governor of a State may request the Administrator for a two-year extension of the three-year period for attainment of a primary standard provided by the 1970 CAA, Section 110(e). This regulation deals with submission of plans under the 1970 Act, and is superseded by the CAA of 1990.

2. State-Specific Rules.

The following rules implement the provisions of § 51.340, and related obsolete attainment date and SIP submission deadlines. Accordingly, EPA is deleting them from the CFR.

This group of rules relate to: the two-year attainment date extensions from Section 110(e); extensions under old Section 172(a) for ozone and CO; and other obsolete attainment dates. Yet others deal with long-elapsed extension dates under Section 110(b) for submissions of plans to meet the secondary total suspended particulate (TSP) or sulfur dioxide (SO_2) standards, as well as some of the attainment dates for the secondary SO_2 standard issued under Section 110(e). These old SO_2 secondary attainment and submission dates may be deleted as obsolete for areas that have since attained the standard. Deletion of these dates will have no adverse effect on any continuing obligation to submit any plans for these standards.

REGION 1 (Connecticut, Massachusetts)

§ 52.372 Extensions
§ 52.1122 Extensions

REGION 2 (New Jersey, New York, Puerto Rico, Virgin Islands)

§ 52.1572 Extensions
§ 52.1580 Attainment dates for National Standards
§ 52.1672 Extensions
§ 52.1682 Attainment dates for National Standards
§ 52.2723 Attainment Dates for National Standards
§ 52.2776 Attainment Dates for National Standards

REGION 3 (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia)

§ 52.427 Extensions
§ 52.428 Attainment Dates for National Standards
§ 52.473 Extensions
§ 52.481 Attainment Dates for National Standards
§ 52.1072 Extensions
§ 52.1078 Attainment Dates for National Standards
§ 52.2422 Extensions
§ 52.2428 Extensions
§ 52.2429 Attainment Dates for National Standards

REGION 4 (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee)

§ 52.52 Extensions
§ 52.54 Attainment Dates for National Standards
§ 52.523 Attainment Dates for National Standards
§ 52.575 Attainment Dates for National Standards
§ 52.577 Extensions
§ 52.922 Extensions
§ 52.1273 Attainment Dates for National Standards
§ 52.1773 Attainment Dates for National Standards
§ 52.1776 Extensions
§ 52.2127 Extensions
§ 52.2128 Attainment Dates for National Standards

REGION 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin)

§ 52.723 Extensions
§ 52.772 Extensions
§ 52.783 Attainment Dates for National Standards
§ 52.1177 Attainment Dates for National Standards
§ 52.1226 Attainment Dates for National Standards
§ 52.1235 Extensions
§ 52.1872 Extensions
§ 52.2582 Extensions

REGION 6 (Arkansas, Louisiana, New Mexico, Oklahoma, Texas)

§ 52.173 Extensions
§ 52.176 Attainment Dates for National Standards
§ 52.979 Attainment Dates for National Standards
§ 52.1630 Attainment Dates for National Standards
§ 52.1631 Extensions
§ 52.1925 Attainment Dates for National Standards
§ 52.2272 Extensions
§ 52.2279 Attainment Dates for National Standards

REGION 7 (Iowa, Kansas, Missouri, Nebraska)

§ 52.824 Extensions
§ 52.827 Attainment Dates for National Standards
§ 52.880 Extensions
§ 52.1331 Extensions
§ 52.1332 Attainment Dates for National Standards
§ 52.1426 Extensions
§ 52.1431 Attainment Dates for National Standards

REGION 8 (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming)

§ 52.322 Extensions
§ 52.325 Attainment Dates for National Standards
§ 52.1823 Attainment Dates for National Standards
§ 52.2174 Attainment Dates for National Standards
§ 52.2627 Attainment Dates for National Standards

REGION 9 (Arizona, California, Hawaii, Nevada, American Samoa, Guam)

§ 52.122 Extensions
§ 52.131 Attainment Dates for National Standards
§ 52.222 Extensions
§ 52.238 Attainment Dates for National Standards
§ 52.622 Extensions
§ 52.628 Attainment Dates for National Standards
§ 52.1480 Attainment Dates for National Standards
§ 52.1481 Extensions
§ 52.2673 Attainment Dates for National Standards
§ 52.2823 Attainment Dates for National Standards

REGION 10 (Alaska, Idaho, Oregon, Washington)

§ 52.81 Attainment Dates
§ 52.82 Extensions
§ 52.672 Extensions
§ 52.2472 Extensions
§ 52.2478 Attainment dates

(c) *Indirect Source Review*

(i) National Rules.

This group of rules deals with requirements that state plans include a program for the preconstruction review of indirect sources of pollution (e.g., parking garages) in order to gain approval.

40 CFR 52.22(b). Section 52.22(b) includes provisions for indirect source review and for disapproving SIPs for

failing to meet indirect source review requirements contained in § 51.12, which no longer exists. Furthermore, this provision has been suspended since shortly after its creation per § 52.22(b)(16). Finally, Section 110(a)(5)(A) of the CAA provides that the Administrator may not require the states to include indirect source review programs in their plans as a condition of plan approval. These provisions establish such prohibited requirements, and thus are obsolete. Accordingly, § 52.22(b) is being removed from the CFR.

40 CFR 52.06(c) Legal authority. Section 52.06(c) deals with requirements for establishing transportation and land use controls. These have been superseded by the completeness criteria in Appendix V of Part 51 under the 1990 amendments to Section 110(k). In addition, the CAA now restricts EPA's authority to require or impose certain transportation control measures in state plans. See Sections 110(c)(2) and 110(a)(5) of the CAA. Accordingly, EPA is removing § 52.06(c) from the CFR.

Part 52 Appendix A: Interpretive rulings for § 52.22(b) regulation for review of new or modified indirect sources.

Appendix A includes interpretive rulings for § 52.22(b), which is being deleted today as superseded by Section 110(a)(5)(A). Accordingly, EPA is removing Appendix A from the CFR.

(ii) Regional Rules.

The following rules implement the provisions of 40 CFR 52.22(b) and Appendix A to part 52, and accordingly EPA is deleting them from the CFR:

REGION 1 (Massachusetts)

§ 52.1124 (a), (b) Review of new sources and modifications

REGION 2 (New Jersey, Puerto Rico)

§ 52.1578 (a), (b) Review of new sources and modifications
§ 52.2724 Review of new sources and modifications

REGION 3 (Delaware, Pennsylvania)

§ 52.426 Review of new sources and modifications
§ 52.2448 Review of new sources and modifications

REGION 4 (Georgia, Mississippi, South Carolina, Tennessee)

§ 52.574 Review of new sources and modifications
§ 52.1276 Review of new sources and modifications
§ 52.2125 Review of new sources and modifications
§ 52.2228 (a), (b) Review of new sources and modifications

REGION 5 (Wisconsin)

§ 52.2579 Review of new sources and modifications

REGION 7 (Kansas, Missouri)

§ 52.878 Review of new sources and modifications
§ 52.1328 Review of new sources and modifications

REGION 9 (Arizona, Hawaii)

§ 52.129 (e), (f) Review of new sources and modifications
§ 52.629 Review of new sources and modifications

REGION 10 (Alaska)

§ 52.78 Review of new sources and modifications

3. State-Specific Regulations Without National Counterparts

The following set of rules includes rules applicable only on a state-specific basis, unaccompanied by any counterpart national rule. EPA has reviewed these rules and found them to be legally obsolete or superseded for the reasons set forth below. These rules are grouped by the EPA Regional Office responsible for administering them.

REGION 2 (New York, Puerto Rico)

40 CFR 52.1675(f) Control strategy and regulations for sulfur oxides. This rule establishes temporary fuel variances which have expired by their own terms many years ago and have no current effect. Accordingly this rule may be removed from the CFR.

40 CFR 52.2730 Compliance schedules. This regulation sets forth final compliance dates for various sources in Puerto Rico, ranging from 1973 to 1974. These dates are now more than twenty years old, and have been rendered obsolete by the subsequently applicable emission-limiting requirements. Accordingly, this rule may be removed from the CFR.

REGION 3 (Pennsylvania, Virginia, West Virginia)

40 CFR 52.2055(c) Review of new sources and modifications. Section 52.2055 provides that special permit requirement regulations for Pennsylvania are approved on the condition that certain revisions are submitted to EPA. Section 52.2055 was originally promulgated on March 19, 1981 (46 FR 17552 (July 13, 1981)). Pennsylvania submitted revisions which addressed the deficiencies cited by EPA in § 52.2055(c). On February 26, 1982 (47 FR 8358), EPA approved these revised sections as part of the Pennsylvania SIP, and codified the approval at § 52.2020(c)(41). At the same time, EPA modified § 52.2055(a) to reflect EPA's approval of these previously conditionally approved or unapproved regulations. Since § 52.2020(c)(41) reflects EPA's current assessment that the 1981 amendments are fully approvable, § 2055(c) is obsolete, and is being removed from the CFR.

40 CFR 52.2424 General requirements. Section 52.2424 provides that the requirements of § 51.110 (b) and (d) are not met because the Virginia SIP does not provide for CO and ozone attainment as expeditiously as practicable, as evidenced by the State's failure to propose sufficient interim control measures to be implemented during the two-year period for which an extension to attain the national standards was requested. This rule has been superseded by new plan submission requirements and attainment dates in the 1990 amendments to the CAA, and accordingly may be removed from the CFR.

40 CFR 52.2522(a) Approval status. Section 52.2522(a) approves a consent order for a period of three years until July 6, 1985, after which affected sources must comply with the applicable SIP. Since the term of the approval has expired, this rule is obsolete and accordingly may be deleted.

40 CFR 52.2522(d). Section 52.2522(d) provides, among other things, that continued satisfaction of the requirements of Part D for the ozone portion of the West Virginia SIP depends on the submittal of RACT requirements by July, 1980 for sources covered by CTGs. This section has been superseded by the RACT provisions of the 1990 CAA, as described above. Accordingly, EPA is removing § 52.2522(d) from the CFR.

40 CFR 52.2531 Control strategy: hydrocarbons. Section 52.2531 conditionally approves the West Virginia ozone plan for Kanawha Valley on the condition that the state adopt an adequate test method for a certain regulation. The revised test method in state regulation XXIII (for bulk gasoline loading terminals) referred to in this section was submitted by West Virginia on November 6, 1980, approved by EPA on November 20, 1981 (46 FR 57044) and codified at § 52.2425(c)(16). Thus § 52.2531 is obsolete, and accordingly, EPA is removing it from the CFR.

40 CFR 52.2532: Control strategy; particulate matter. Section 52.2532 states that West Virginia does not have approved plans for attaining secondary TSP standards in certain areas. EPA may no longer require development of control strategies designed to attain the

secondary TSP standard after the July l, 1987 promulgation of the particulate matter (PM10) standard and the repeal of the secondary TSP standard. See 52 FR 24634 (July 1, 1987). This regulation is therefore obsolete, and accordingly EPA is removing it from the CFR.

REGION 5 (Ohio)

40 CFR 52.1881(b), the following portions only:

(12) Allen Co.
(13) Ashtabula Co.
(14) Athens Co.
(15) Auglaize Co.
(16) Belmont Co.
(18) Clark Co.
(20) Columbiana Co.
(22) Crawford Co.
(24) Delaware Co.
(25) Erie Co.
(26) Fairfield Co.
(29) Greene Co.
(30) Hamilton Co.
(31) Hancock Co.
(32) Henry Co.
(33) Huron Co.
(34) Jefferson Co.
(36) Lawrence Co.: delete all but (36)(v) (Allied Chemical)
(37) Licking Co.
(41) Marion Co.
(42) Medina Co.
(43) Meigs Co.
(44) Mercer Co.
(45) Miami Co.
(46) Montgomery Co.: delete all but (46)(i) (general limit)
(47) Morgan Co.
(48) Muskingum Co.
(49) Ottawa Co.
(50) Paulding Co.
(51) Pickaway Co.
(53) Richland Co.
(55) Sandusky Co.: delete all but 55(iv) (Martin Marietta)
(56) Scioto Co.
(57) Seneca Co.
(60) Trumbull Co.
(61) Tuscarawas Co.
(62) Vinton Co.
(63) Washington Co.: delete all but (63)(iii) (Shell Oil)
(64) Wayne Co.

The preceding portions of § 52.1881(b) set forth various regulations for the control of sulfur dioxide in the State of Ohio. In 1976, to address the lack of sulfur dioxide SIP limits in Ohio, EPA promulgated a Federal Implementation Plan (FIP). In the early 1980's Ohio adopted and submitted and EPA approved State rules limiting sulfur dioxide emissions for many of the counties regulated in the FIP. Ever since that time, § 52.1881 has stated that approved State rules supersede any corresponding FIP rules. The superseded rules have no effect and are unenforceable, and thus no longer need be retained in the CFR. The table above lists the rules in § CFR 52.1881(b) which have been superseded and are accordingly being removed from the CFR.

REGION 6 (Louisiana, New Mexico, Oklahoma, Texas)

40 CFR 52.980 Compliance schedules. Section 52.980 sets compliance schedules for certain facilities in Louisiana; the latest compliance date set is 1982. Thus these facilities were required to have come into compliance more than twelve years ago, and § 52.980 is now obsolete. Any remaining issues with regard to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.980 from the CFR.

40 CFR 52.1626 Compliance schedules. Section 52.1626 sets forth compliance schedules for certain sources in New Mexico; final compliance dates are 1980, 1982, and 1984. The facilities covered by this section were therefore required to have come into compliance more than ten years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.1626 from the CFR.

40 CFR 52.1926 General requirements. Section 52.1926 disapproves Oklahoma's definition of best available control technology (BACT). The State subsequently adopted and EPA approved rules to correct this deficiency. Section 52.1926 was superseded by EPA's approval of the Oklahoma prevention of significant deterioration (PSD) SIP revisions. See §§ 52.1929, 52.1920(c)(38)(i)(C); 56 FR 5656 (Feb. 12, 1991). EPA is therefore removing § 52.1926 from the CFR.

40 CFR 52.2275(d) Control strategy and regulations: ozone. Section 52.2275(d) sets forth certain test methods to be used for purposes of Federal enforcement. The State of Texas has adopted rules to cover these areas and EPA has approved them, making § 52.2275(d) obsolete. See § 52.2270(c)(77); 57 FR 44124 (Sept. 24, 1992). Accordingly, EPA is removing this section from the CFR.

REGION 10 (Alaska, Idaho, Oregon, Washington)

40 CFR 52.677 Compliance schedules. Section 52.677 sets forth compliance schedules for certain facilities in Idaho. The final compliance date is 1974, and therefore the facilities covered by this section were required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.677 from the CFR.

40 CFR 52.1975 Compliance schedules. Section 52.1975 sets forth compliance schedules for certain types of facilities, with the latest final compliance date set for January, 1975. The facilities covered by this section were therefore required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.1975 from the CFR.

40 CFR 52.2481 Compliance schedules. Section 52.2481 sets forth compliance schedules for certain types of facilities in Washington, with the final compliance date set for July, 1974. The facilities covered by this section were therefore required to come into compliance more than 20 years ago. Any remaining issues with regards to compliance will be dealt with under the currently applicable requirements. EPA is therefore removing § 52.2481 from the CFR.

40 CFR 52.688 Idaho rules and regulations. Section 52.688 provides that Idaho must ensure that PSD and other new source review and operating permits comply with the applicable provisions of EPA's revised stack height regulations, and must also revise its stack height regulations by April 8, 1985, to be consistent with EPA's revised regulations. The required SIP revision has been submitted and approved. See § 52.670(c)(25); 53 FR 48539 (Dec. 1, 1988). Accordingly, § 52.688 is now obsolete and EPA is removing it from the CFR.

40 CFR 52.689 Idaho lead control strategy. Section 52.689 sets forth a lead control strategy for the Bunker Limited Smelter and the area immediately surrounding it. The source, Bunker Limited, has been dismantled and has ceased to exist. This regulation is therefore obsolete, and EPA is removing it from the CFR.

40 CFR 52.1974 Oregon transportation and land use control. Section 52.1974 provides that the Governor of Oregon must submit to EPA no later than April, 1974, regulations needed to implement inspection/maintenance and retrofit programs. The required SIP revision has been submitted and approved. See § 52.1970; 46 FR 35 (Jan. 2, 1981). Accordingly, § 52.1974 is now obsolete and EPA is removing it from the CFR.

40 CFR 52.1976 Oregon control strategy: particulate matter. Section 52.1976 disapproves certain Oregon rules as inconsistent with the requirements for attainment and

maintenance of the particulate matter NAAQS. The control strategy for the Portland TSP nonattainment area was subsequently submitted and approved. See 46 FR 60017 (Dec. 8, 1981). Since § 52.1976 is now obsolete, EPA is removing it from the CFR.

40 CFR 52.2475 Washington legal authority. Section 52.2475 found that Washington lacked legal authority to implement various transportation control strategies. The required legal authorities and SIP revisions have been submitted and approved. See §§ 52.2470(c)(22) (Seattle), 52.2470(c)(24) (Spokane); 46 FR 45607 (Sept. 14, 1981), 47 FR 1266 (Mar. 22, 1982). Since § 52.2475 is now obsolete, EPA is removing it from the CFR.

Regulations made obsolete by § 52.2470. The following miscellaneous provisions for the State of Washington, which date back to the early 1970's and arise in part from a FIP, are obsolete and have been superseded by approved SIP control strategies (see § 52.2470; 46 FR 45607 (Sept. 14, 1981), 47 FR 1266 (Mar. 22, 1982)):

§ 52.2477 Washington source surveillance.
§ 52.2485 Washington Inspection and Maintenance Program
§ 52.2486 Washington Management of Parking Supply
§ 52.2489 Washington Reduction of Parking Spaces
§ 52.2490 Washington Air bleed to Intake Manifold
§ 52.2491 Washington Exhaust Gas Recirculation-air bleed
§ 52.2492 Washington Computer Carpool Matching System
§ 52.2493 Washington Transit Improvement Measure
§ 52.2494 Washington Bike Lanes and Bike Racks
§ 52.2496 Washington Maintenance of National Standards

B. Portions of Parts 60, 65, 85, and 86

40 CFR Part 60, Subpart D, § 60.47. Subpart D of part 60, promulgated on July 1, 1979, establishes new source performance standards for fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971, pursuant to Section 111 of the CAA. CAA Section 111(j) gives the Administrator the discretion to issue one or more waivers from the requirements of Section 111 upon the request of any person proposing to own or operate a new source using an innovative technological system or systems of continuous emission reduction. Section 60.47 establishes such a waiver for sulfur dioxide emissions from Unit No. 3 at the Homer City Steam Electric Generating Station Center Township in Indiana County, Pennsylvania. Sections 60.47 (b) and (c) expressly state that the waiver expires on November 30, 1981, and that commencing December 1, 1981, and continuing thereafter, the emissions limitations provided in § 60.43(a)(2) apply. Accordingly, since the waiver has expired, EPA is removing § 60.47, including References and Appendix I, from the CFR.

40 CFR Part 60, Subpart BB, § 60.286. Subpart BB of part 60, promulgated on February 23, 1978, and amended on May 20, 1986, establishes new source performance standards for Kraft Pulp Mills pursuant to Section 111 of the CAA. CAA Section 111(j) gives the Administrator the discretion to issue one or more waivers from the requirements of Section 111 upon the request of any person proposing to own or operate a new source using an innovative technological system or systems of continuous emission reduction. Section 60.286 establishes such a waiver for the No. 10 batch digester at Owens-Illinois Incorporated's Valdosta kraft pulp mill in Clyattville, Georgia. Section 60.286(a)(2) expressly states that the waiver expires on or before December 31, 1987. Since the waiver has expired by its own terms, EPA is removing § 60.286 from the CFR.

40 CFR Part 60, Subpart AAA, §§ 60.530(c), 60.530(d), 60.532(a), 60.533(e)(2), 60.533(h), 60.533(j)(1)(i), 60.533(p)(4)(ii)(B), 60.535(a)(2), 60.535(c), 60.537(e), 60.537(b)(2), 60.539a(b)(1). Subpart AAA of part 60 establishes standards of performance for new residential wood heaters pursuant to Section 111 of the CAA. The standards were promulgated on February 26, 1988, and amended on April 12, 1988, April 26, 1988, and February 13, 1992. Section 60.532(b) establishes emission limitations for particulate matter for each wood heater manufactured on or after July 1, 1990, or sold at retail on or after July 1, 1992. Certain provisions of subpart AAA which establish duties, emission limitations, or waivers for the period preceding July 1, 1992, are superseded by § 60.532(b) and are therefore being removed from the CFR. These provisions are:

Section 60.530(c), which exempts certain wood heaters manufactured before July 1, 1990, and sold at retail before July 1, 1992;

Section 60.530(d), which exempts certain wood heaters manufactured between July 1, 1988 and June 30, 1989, and sold at retail before July 1, 1991;

Section 60.532(a), which establishes particulate matter emission limitations for wood heaters manufactured on or after July 1, 1988, or sold at retail on or after July 1, 1990;

Section 60.533(e)(2), which establishes an option for a wood heater application determination for a period ending June 30, 1988;

Section 60.533(h), which specifies the Administrator's duties between the period April 1, 1987 through July 1, 1990 with respect to determining whether an undue certification delay exists;

Section 60.533(j)(1)(i), which states that a certificate of compliance for a model meeting the emissions limitations in § 60.532(a) expires on June 30, 1990;

Section 60.533(p)(4)(ii)(B), which requires the Administrator to publish a decision by July 1, 1990 for each test method and procedure set out in § 60.534(a);

Section 60.535(a)(2), which establishes an option for a laboratory to be certified for a period ending on June 30, 1988;

Section 60.535(c), which applies to laboratories accredited by the State of Oregon prior to 1988 and such accreditations expired in 1993 or earlier;

Section 60.537(b)(2), which requires accredited laboratories to issue certain reports to the Administrator between April 1, 1987 and July 1, 1990;

Section 60.537(e), which establishes the procedures for a manufacturer seeking an exemption under § 60.530(d), which is obsolete (see above); and

Section 60.539a(b)(1), which no longer is applicable because it applies to wood heaters exempted under § 60.530(c), which is obsolete (see above).

40 CFR Part 65. EPA promulgated part 65's regulations on delayed compliance orders in 1978 pursuant to Section 113(d) of the CAA. Section 113(d) authorized the Administrator to issue delayed compliance orders permitting a delay in compliance with applicable regulations contained in a SIP. The 1990 amendments to the CAA amended Section 113(d) and repealed the authority to issue delayed compliance orders. Furthermore, all of the delayed compliance orders listed in part 65 have expired. Accordingly, EPA is removing part 65 from the CFR.

40 CFR Part 85, Subpart E. Prior to 1990, Section 202(b)(7) of the CAA established a research objective to reduce emissions of oxides of nitrogen from light-duty motor vehicles. In 1980, EPA promulgated subpart E of part 85 establishing a research program to implement Section 202(b)(7)'s objective. The 1990 amendments to the CAA repealed Section 202(b)(7), making subpart E obsolete. Accordingly, EPA is now removing subpart E from the CFR.

40 CFR §§ 86.1104–87 and 86.1104–90. Subpart L of 40 CFR part 86 sets

forth nonconformance penalties for gasoline-fueled and diesel heavy-duty engines (HDEs) and heavy-duty vehicles (HDVs), including certain light-duty trucks. Section 206(g) of the CAA requires EPA to issue a certificate of conformity for HDEs or HDVs that exceed an applicable emissions standard, but do not exceed an upper limit associated with that standard, if the manufacturer pays a nonconformance penalty (NCP) established by rulemaking.

Over time EPA has promulgated three regulatory sections which set forth the upper emission limit for which an NCP can be established. Each time EPA promulgated one of these regulatory sections, the promulgation of the new section effectively limited the applicability of the existing section. When EPA first passed § 86.1104–87, this section established the upper limit for model year (MY) 1987 and all subsequent model years. But when EPA promulgated § 86.1104–90 for MY1990 and later models, the new section's promulgation limited § 86.1104–87's applicability to MY1987 through MY1989. Similarly, when EPA promulgated § 86.1104–91 for MY1991 and subsequent model years this promulgation had the effect of limiting § 86.1104–90's applicability to MY1990 only.

Because both § 86.1104–87 and § 86.1104–90 are time limited to model years that have passed, they have no legal effect for current or future model years. EPA is therefore removing §§ 86.1104–87 and 86.1104–90 from the CFR.

40 CFR §§ 86.1105–87(b) and 86.1105–87(c)(1). Section 86.1105–87 designates those emission standards for HDEs and HDVs for which the payment of a NCP is an option in the event an HDE or HDV exceeds the applicable emission standard. Some of these NCP provisions are now obsolete because the emission standards to which they relate are no longer in effect for current or future model years. Section 86.1105–87(b), which makes NCPs available for diesel HDEs that exceed an oxides of nitrogen (NO_X) emission standard of 6.0 grams per brake horsepower-hour (g/bhp-hr) beginning in MY1990 or a particulate (PM) emission standard of 0.60 g/bhp-hr beginning in MY1988, is obsolete because these emissions standards no longer apply to current or future model years. Beginning with MY1991 diesel HDEs, the NO_X emission standard changed to 5.0 g/bhp-hr, while the PM standard changed to 0.25 g/bhp-hr. See 40 CFR 86.091–11(a)(1)(iii)–(iv). Similarly, § 86.1105–87(c)(1), which allows NCPs for petroleum-fueled diesel HDEs MY1991 or later that exceed 0.25 PM g/bhp-hr, is now obsolete because the PM standard for MY1994 and later model year diesel HDEs is 0.07 or 0.10 g/bhp-hr, depending on whether the engine is used in an urban bus. See 40 CFR 86.094–11(a)(1)(iv). Accordingly, EPA is removing paragraphs (b) and (c)(1) of § 86.1105–87 from the CFR.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The CAA and Administrative Procedure Act generally require EPA to provide prior notice and opportunity for public comment before issuing a final rule. 42 U.S.C. 7607(d), 5 U.S.C. 553(b),(c). Rules are exempt from this requirement if EPA finds for good cause that notice and comment are unnecessary. 42 U.S.C. 7607(d)(1), 5 U.S.C. 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed in Sections I and II, these rules are no longer legally in effect; thus, withdrawing them from the CFR has no legal impact and merely codifies the current legal status of the rules.

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because the withdrawal of these rules from the CFR merely reflects their current legal status and thus has no regulatory impact, this action is not a ''significant'' regulatory action within the meaning of E.O. 12866, and does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, because these rules are no longer legally in effect, their deletion from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 52

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

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 65

Environmental protection, Air pollution control.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: June 8, 1995.

Mary D. Nichols

Administrator

For the reasons set out in the preamble, and under the authority of 42 U.S.C. 7401–7671q, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 51.105 [Amended]

2. Section 51.105 is amended by removing the first sentence of the paragraph.

§ 51.111 [Amended]

3. In § 51.111, paragraphs (a), (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (a).

§ 51.113 [Amended]

4. Section 51.113 is removed.

§ 51.213 [Amended]

5. In § 51.213, paragraph (b) is removed, and paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), respectively.

§ 51.241 [Amended]

6. In § 51.241, paragraph (a) is amended by removing the last two sentences of the paragraph.

§ 51.340 [Amended]

7. Section 51.340 is removed.

Subpart D to Part 51 [Removed and reserved]

8. Part 51, Subpart D is removed and reserved.

Appendix U to Part 51 [Removed]

9. Appendix U to Part 51 is removed.

PART 52—[AMENDED]

10. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

§ 52.06 [Amended]

11. In § 52.06, paragraph (c) is removed.

§ 52.22 [Removed]

12. Section 52.22 is removed.

§ 52.25 [Removed]

13. Section 52.25 is removed.

§ 52.52 [Removed]

14. Section 52.52 is removed.

§ 52.54 [Removed]

15. Section 52.54 is removed.

§ 52.59 [Removed]

16. Section 52.59 is removed.

§ 52.78 [Removed]

17. Section 52.78 is removed.

§ 52.81 [Removed and reserved]

18. Section 52.81 is removed and reserved.

§ 52.82 [Removed and reserved]

19. Section 52.82 is removed and reserved.

§ 52.122 [Removed and reserved]

20. Section 52.122 is removed and reserved.

§ 52.129 [Amended]

21. In § 52.129, paragraphs (e) and (f) are removed, and paragraph (g) is redesignated as paragraph (e).

§ 52.131 [Removed and reserved]

22. Section 52.131 is removed and reserved.

§ 52.143 [Removed and reserved]

23. Section 52.143 is removed and reserved.

§ 52.173 [Removed and reserved]

24. Section 52.173 is removed and reserved.

§ 52.176 [Removed and reserved]

25. Section 52.176 is removed and reserved.

§ 52.182 [Removed]

26. Section 52.182 is removed.

§ 52.222 [Removed and reserved]

27. Section 52.222 is removed and reserved.

§ 52.238 [Removed and reserved]

28. Section 52.238 is removed and reserved.

§ 52.267 [Removed and reserved]

29. Section 52.267 is removed and reserved.

§ 52.322 [Removed and reserved]

30. Section 52.322 is removed and reserved.

§ 52.325 [Removed and reserved]

31. Section 52.325 is removed and reserved.

§ 52.341 [Removed and reserved]

32. Section 52.341 is removed and reserved.

§ 52.372 [Removed and reserved]

33. Section 52.372 is removed and reserved.

§ 52.379 [Removed and reserved]

34. Section 52.379 is removed and reserved.

§ 52.426 [Removed and reserved]

35. Section 52.426 is removed and reserved.

§ 52.427 [Removed and reserved]

36. Section 52.427 is removed and reserved.

§ 52.428 [Removed and reserved]

37. Section 52.428 is removed and reserved.

§ 52.431 [Removed and reserved]

38. Section 52.431 is removed and reserved.

§ 52.473 [Removed and reserved]

39. Section 52.473 is removed and reserved.

§ 52.481 [Removed and reserved]

40. Section 52.481 is removed and reserved.

§ 52.497 [Removed and reserved]

41. Section 52.497 is removed and reserved.

§ 52.523 [Removed and reserved]

42. Section 52.523 is removed and reserved.

§ 52.529 [Removed and reserved]

43. Section 52.529 is removed and reserved.

§ 52.574 [Removed and reserved]

44. Section 52.574 is removed and reserved.

§ 52.575 [Removed and reserved]

45. Section 52.575 is removed and reserved.

§ 52.577 [Removed and reserved]

46. Section 52.577 is removed and reserved.

§ 52.580 [Removed and reserved]

47. Section 52.580 is removed and reserved.

§ 52.622 [Removed and reserved]

48. Section 52.622 is removed and reserved.

§ 52.628 [Removed and reserved]

49. Section 52.628 is removed and reserved.

§ 52.629 [Removed and reserved]

50. Section 52.629 is removed and reserved.

§ 52.631 [Removed and reserved]

51. Section 52.631 is removed and reserved.

§ 52.672 [Removed and reserved]

52. Section 52.672 is removed and reserved.

§ 52.677 [Removed and reserved]

53. Section 52.677 is removed and reserved.

§ 52.682 [Removed and reserved]

54. Section 52.682 is removed and reserved.

§ 52.688 [Removed and reserved]

55. Section 52.688 is removed and reserved.

§ 52.689 [Removed and reserved]

56. Section 52.689 is removed and reserved.

§ 52.723 [Removed and reserved]

57. Section 52.723 is removed and reserved.

§ 52.735 [Removed and reserved]

58. Section 52.735 is removed and reserved.

§ 52.772 [Removed and reserved]

59. Section 52.772 is removed and reserved.

§ 52.783 [Removed and reserved]

60. Section 52.783 is removed and reserved.

§ 52.792 [Removed and reserved]

61. Section 52.792 is removed and reserved.

§ 52.824 [Removed and reserved]

62. Section 52.824 is removed and reserved.

§ 52.827 [Removed and reserved]

63. Section 52.827 is removed and reserved.

§ 52.832 [Removed and reserved]

64. Section 52.832 is removed and reserved.

§ 52.878 [Removed and reserved]

65. Section 52.878 is removed and reserved.

§ 52.880 [Removed and reserved]

66. Section 52.880 is removed and reserved.

§ 52.883 [Removed and reserved]

67. Section 52.883 is removed and reserved

§ 52.922 [Removed and reserved]

68. Section 52.922 is removed and reserved.

§ 52.929 [Removed and reserved]

69. Section 52.929 is removed and reserved.

§ 52.979 [Removed and reserved]

70. Section 52.979 is removed and reserved

§ 52.980 [Removed and reserved]

71. Section 52.980 is removed and reserved.

§ 52.1028 [Removed and reserved]

72. Section 52.1028 is removed and reserved.

§ 52.1072 [Removed and reserved]

73. Section 52.1072 is removed and reserved.

§ 52.1078 [Removed and reserved]

74. Section 52.1078 is removed and reserved.

§ 52.1115 [Removed and reserved]

75. Section 52.1115 is removed and reserved.

§ 52.1122 [Removed and reserved]

76. Section 52.1122 is removed and reserved.

§ 52.1124 [Amended]

77. In § 52.1124, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated as paragraph (a).

§ 52.1177 [Removed and reserved]

78. Section 52.1177 is removed and reserved.

§ 52.1178 [Removed and reserved]

79. Section 52.1178 is removed and reserved.

§ 52.1226 [Removed and reserved]

80. Section 52.1226 is removed and reserved.

§ 52.1229 [Removed and reserved]

81. Section 52.1229 is removed and reserved.

§ 52.1235 [Removed and reserved]

82. Section 52.1235 is removed and reserved.

§ 52.1273 [Removed and reserved]

83. Section 52.1273 is removed and reserved.

§ 52.1276 [Removed and reserved]

84. Section 52.1276 is removed and reserved.

§ 52.1279 [Removed and reserved]

85. Section 52.1279 is removed and reserved.

§ 52.1328 [Removed and reserved]

86. Section 52.1328 is removed and reserved.

§ 52.1331 [Removed and reserved]

87. Section 52.1331 is removed and reserved.

§ 52.1332 [Removed and reserved]

88. Section 52.1332 is removed and reserved.

§ 52.1338 [Removed and reserved]

89. Section 52.1338 is removed and reserved.

§ 52.1381 [Removed and reserved]

90. Section 52.1381 is removed and reserved.

§ 52.1426 [Removed and reserved]

91. Section 52.1426 is removed and reserved.

§ 52.1431 [Removed and reserved]

92. Section 52.1431 is removed and reserved.

§ 52.1435 [Removed and reserved]

93. Section 52.1435 is removed and reserved.

§ 52.1480 [Removed and reserved]

94. Section 52.1480 is removed and reserved.

§ 52.1481 [Removed and reserved]

95. Section 52.1481 is removed and reserved.

§ 52.1528 [Removed and reserved]

96. Section 52.1528 is removed and reserved.

§ 52.1572 [Removed and reserved]

97. Section 52.1572 is removed and reserved.

§ 52.1578 [Amended]

98. In § 52.1578, paragraphs (a) and (b) are removed, and paragraph (c) is redesignated as paragraph (a).

§ 52.1580 [Removed and reserved]

99. Section 52.1580 is removed and reserved.

§ 52.1602 [Removed and reserved]

100. Section 52.1602 is removed and reserved.

§ 52.1626 [Removed and reserved]

101. Section 52.1626 is removed and reserved.

§ 52.1630 [Removed and reserved]

102. Section 52.1630 is removed and reserved.

§ 52.1631 [Removed and reserved]

103. Section 52.1631 is removed and reserved.

§ 52.1672 [Removed and reserved]

104. Section 52.1672 is removed and reserved.

§ 52.1675 [Amended]

105. In § 52.1675, paragraph (f) is removed and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g), respectively.

§ 52.1682 [Removed and reserved]

106. Section 52.1682 is removed and reserved.

§ 52.1688 [Removed and reserved]

107. Section 52.1688 is removed and reserved.

§ 52.1773 [Removed and reserved]

108. Section 52.1773 is removed and reserved.

§ 52.1776 [Removed and reserved]

109. Section 52.1776 is removed and reserved.

§ 52.1777 [Removed and reserved]

110. Section 52.1777 is removed and reserved.

§ 52.1823 [Removed and reserved]

111. Section 52.1823 is removed and reserved.

§ 52.1827 [Removed and reserved]

112. Section 52.1827 is removed and reserved.

§ 52.1872 [Removed and reserved]

113–114. Section 52.1872 is removed and reserved.

§ 52.1881 [Amended]

115. In § 52.1881:

a. Paragraphs (b)(12) through (16) are removed and paragraph (b)(17) is redesignated as paragraph (b)(12).

b. Paragraph (b)(18) is removed and paragraph (b)(19) is redesignated as paragraph (b)(13).

c. Paragraph (b)(20) is removed and paragraph (b)(21) is redesignated as paragraph (b)(14).

d. Paragraph (b)(22) is removed and paragraph (b)(23) is redesignated as paragraph (b)(15).

e. Paragraphs (b)(24), (25) and (26) are removed and paragraphs (b)(27) and (28) are redesignated as paragraphs (b)(16) and (17), respectively.

f. Paragraphs (b)(29), (30), (31), (32), (33) and (34) are removed and paragraph (b)(35) is redesignated as paragraph (b)(18).

g. Paragraph (b)(36) is redesignated as paragraph (b)(19), newly redesignated paragraphs (b)(19)(i) through (iv) are removed, and newly redesignated paragraph (b)(19)(v) is further redesignated as paragraph (b)(19)(i).

h. A new paragraph (b)(19)(ii) is added and reserved.

i. Paragraph (b)(37) is removed and paragraphs (b)(38), (39) and (40) are redesignated as paragraphs (b)(20), (21), and (22) respectively.

j. Paragraphs (b)(41), (42), (43), (44), and (45) are removed.

k. Paragraph (b)(46) is redesignated as paragraph (b)(23) and newly redesignated paragraphs (b)(23)(ii) through (vii) are removed.

l. A new paragraph (b)(23)(ii) is added and reserved.

m. Paragraphs (b)(47), (48), (49), (50) and (51) are removed and paragraph (b)(52) is redesignated as paragraph (b)(24).

n. Paragraph (b)(53) is removed and paragraph (b)(54) is redesignated as paragraph (b)(25).

o. Paragraph (b)(55) is redesignated as paragraph (b)(26), newly designated paragraphs (b)(26)(i) through (iii) and (v) are removed, and newly redesignated paragraph (b)(26)(iv) is further redesignated as paragraph (b)(26)(i). A new paragraph (b)(26)(ii) is added and reserved.

p. Paragraphs (b)(56) and (57) are removed and paragraphs (b)(58) and (59) are redesignated as paragraphs (b)(27) and (28), respectively.

q. Paragraphs (b)(60), (61), and (62) are removed.

r. Paragraph (b)(63) is redesignated as paragraph (b)(29), newly redesignated paragraphs (b)(29)(i) and (ii) are removed, and newly redesignated paragraph (b)(29)(iii) is further redesignated as paragraph (b)(29)(i). A new paragraph (b)(29)(ii) is added and reserved.

s. Paragraph (b)(64) is removed and paragraph (b)(65) is redesignated as paragraph (b)(30).

§ 52.1883 [Removed and reserved]

116. Section 52.1883 is removed and reserved.

§ 52.1925 [Removed and reserved]

117. Section 52.1925 is removed and reserved.

§ 52.1926 [Removed and reserved]

118. Section 52.1926 is removed and reserved.

§ 52.1927 [Removed and reserved]

119. Section 52.1927 is removed and reserved.

§ 52.1974 [Removed and reserved]

120. Section 52.1974 is removed and reserved.

§ 52.1975 [Removed and reserved]

121. Section 52.1975 is removed and reserved.

§ 52.1976 [Removed and reserved]

122. Section 52.1976 is removed and reserved.

§ 52.1986 [Removed and reserved]

123. Section 52.1986 is removed and reserved.

§ 52.2055 [Amended]

124. In § 52.2055, paragraph (c) is removed.

§ 52.2056 [Removed and reserved]

125. Section 52.2056 is removed and reserved.

§ 52.2082 [Removed and reserved]

126. Section 52.2082 is removed and reserved.

§ 52.2125 [Removed and reserved]

127. Section 52.2125 is removed and reserved.

§ 52.2127 [Removed and reserved]

128. Section 52.2127 is removed and reserved.

§ 52.2128 [Removed and reserved]

129. Section 52.2128 is removed and reserved.

§ 52.2129 [Removed and reserved]

130. Section 52.2129 is removed and reserved.

§ 52.2174 [Removed and reserved]

131. Section 52.2174 is removed and reserved.

§ 52.2176 [Removed and reserved]

132. Section 52.2176 is removed and reserved.

§ 52.2228 [Amended]

133. In § 52.2228, paragraphs (a) and (b) are removed, and paragraphs (c), (d), (e) and (f) are redesignated as paragraphs (a), (b), (c) and (d) respectively.

§ 52.2232 [Removed]

134. Section 52.2232 is removed.

§ 52.2272 [Removed and reserved]

135. Section 52.2272 is removed and reserved.

§ 52.2275 [Amended]

136. In § 52.2275, paragraph (d) is removed and reserved.

§ 52.2279 [Removed and reserved]

137. Section 52.2279 is removed and reserved.

§ 52.2302 [Removed and reserved]

138. Section 52.2302 is removed and reserved.

§ 52.2345 [Removed and reserved]

139. Section 52.2345 is removed and reserved.

§ 52.2379 [Removed and reserved]

140. Section 52.2379 is removed and reserved.

§ 52.2422 [Removed and reserved]

141. Section 52.2422 is removed and reserved.

§ 52.2424 [Removed and reserved]

142. Section 52.2424 is removed and reserved.

§ 52.2428 [Removed and reserved]

143. Section 52.2428 is removed and reserved.

§ 52.2429 [Removed and reserved]

144. Section 52.2429 is removed and reserved.

§ 52.2448 [Removed and reserved]

145. Section 52.2448 is removed and reserved.

§ 52.2449 [Removed and reserved]

146. Section 52.2449 is removed and reserved.

§ 52.2472 [Removed and reserved]

147. Section 52.2472 is removed and reserved.

§ 52.2475 [Removed and reserved]

148. Section 52.2475 is removed and reserved.

§ 52.2477 [Removed and reserved]

149. Section 52.2477 is removed and reserved.

§ 52.2478 [Removed and reserved]

150. Section 52.2478 is removed and reserved.

§ 52.2481 [Removed and reserved]

151. Section 52.2481 is removed and reserved.

§ 52.2485 [Removed and reserved]

152. Section 52.2485 is removed and reserved.

§ 52.2486 [Removed and reserved]

153. Section 52.2486 is removed and reserved.

§ 52.2489 [Removed and reserved]

154. Section 52.2489 is removed and reserved.

§ 52.2490 [Removed and reserved]

155. Section 52.2490 is removed and reserved.

§ 52.2491 [Removed and reserved]

156. Section 52.2491 is removed and reserved.

§ 52.2492 [Removed and reserved]

157. Section 52.2492 is removed and reserved.

§ 52.2493 [Removed and reserved]

158. Section 52.2493 is removed and reserved.

§ 52.2494 [Removed and reserved]

159. Section 52.2494 is removed and reserved.

§ 52.2496 [Removed and reserved]

160. Section 52.2496 is removed and reserved.

§ 52.2522 [Amended]

161. In § 52.2522, paragraphs (a) and (d) are removed, and paragraphs (b) and (c) are redesignated as paragraphs (a) and (b), respectively; and paragraphs (e) and (f) are redesignated as paragraphs (c) and (d) respectively.

§ 52.2526 [Removed and reserved]

162. Section 52.2526 is removed and reserved.

§ 52.2531 [Removed and reserved]

163. Section 52.2531 is removed and reserved.

§ 52.2532 [Removed and reserved]

164. Section 52.2532 is removed and reserved.

§ 52.2579 [Removed and reserved]

165. Section 52.2579 is removed and reserved.

§ 52.2580 [Removed and reserved]

166. Section 52.2580 is removed and reserved.

§ 52.2582 [Removed and reserved]

167. Section 52.2582 is removed and reserved.

§ 52.2627 [Removed and reserved]

168. Section 52.2627 is removed and reserved.

§ 52.2631 [Removed and reserved]

169. Section 52.2631 is removed and reserved.

§ 52.2673 [Removed and reserved]

170. Section 52.2673 is removed and reserved.

§ 52.2674 [Removed and reserved]

171. Section 52.2674 is removed and reserved.

§ 52.2723 [Removed and reserved]

172. Section 52.2723 is removed and reserved.

§ 52.2724 [Removed and reserved]

173. Section 52.2724 is removed and reserved.

§ 52.2728 [Removed and reserved]

174. Section 52.2728 is removed and reserved.

§ 52.2730 [Removed and reserved]

175. Section 52.2730 is removed and reserved.

§ 52.2776 [Removed and reserved]

176. Section 52.2776 is removed and reserved.

§ 52.2778 [Removed and reserved]

177. Section 52.2778 is removed and reserved.

§ 52.2823 [Removed and reserved]

178. Section 52.2823 is removed and reserved.

§ 52.2826 [Removed and reserved]

179. Section 52.2826 is removed and reserved.

Appendix A part 52 [Removed]

180. Appendix A to part 52 is removed.

PART 60—[AMENDED]

181. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

§ 60.47 [Removed]

182. Section 60.47 (including References and Appendix I) is removed.

§ 60.286 [Removed]

183. Section 60.286 is removed.

§ 60.530 [Amended]

184. In § 60.530, paragraphs (c) and (d) are removed and reserved.

§ 60.532 [Amended]

185. In § 60.532, paragraph (a) is removed and reserved.

§ 60.533 [Amended]

186. In § 60.533, paragraphs (e)(2), (h), (j)(1)(i), and (p)(4)(ii)(B) are removed and reserved.

§ 60.535 [Amended]

187. In § 60.535, paragraphs (a)(2) and (c) are removed and reserved.

§ 60.537 [Amended]

188. In § 60.537, paragraphs (b)(2) and (e) are removed and reserved.

§ 60.539a [Amended]

189. In § 60.539a, paragraph (b)(1) is removed and reserved.

PART 65—[REMOVED]

190. Part 65 is removed.

PART 85—[AMENDED]

191. The authority citation for Part 85 continues to read as follows:

Authority: Sections 203, 205, 207, 208 and 301(a) of the Clean Air Act as amended, 42 U.S.C. 7522, 7524, 7541, 7542, and 7601(a).

Subpart E [Removed and reserved]

192. Part 85, Subpart E is removed and reserved.

PART 86—[AMENDED]

193. The authority citation for Part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 206, 207, 208, 215, 216, 217, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

§ 86.1104–87 [Removed]

194. Section 86.1104–87 is removed.

§ 86.1104–90 [Removed]

195. Section 86.1104–90 is removed.

§ 86.1105–87 [Amended]

196. In § 86.1105–87, paragraphs (b) and (c)(1) are removed and reserved.

[FR Doc. 95–15029 Filed 6–28–95; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Parts 35, 122, 123, 124, 125, 140, 141, 144, 146, 148, 403, 405, 406, 407, 408, 409, 411, 412, 417, 418, 424, 426, 427, 428, 432, 435, 436, 443, 446, 447, 454, 455, 457, 458, 460

[FRL–5223–9]

National Pollutant Discharge Elimination System and Pretreatment Programs; State and Local Assistance Programs; Effluent Limitations Guidelines and Standards; Public Water Supply and Underground Injection Control Programs: Removal of Legally Obsolete or Redundant Rules

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today removing from the Code of Federal Regulations (CFR) a number of regulations pertaining to its water programs that are obsolete or redundant. Deleting the obsolete regulations from the CFR will clarify the legal status of these regulations for both the regulated community and the public. EPA is also deleting from the CFR the maximum contaminant level goal (''MCLG'') and maximum contaminant level (''MCL'') for nickel, which have been vacated by a court. In addition, EPA is making one correction due to a typographical error.

EFFECTIVE DATE: This final rule takes effect on June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Cynthia Puskar, Policy and Resources Management Office (4102), U.S. Environmental Protection Agency, 401 M St. SW, Washington, D.C. 20460, (202) 260–8532.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 4, 1995 the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and, by June 1, 1995 to identify those rules that are obsolete or unduly burdensome. EPA has conducted a review of all of its rules, including rules issued under the Federal Water Pollution Control Act, as amended (''FWPCA'') (33 U.S.C. 1158 and 1251 et seq.) (also cited below as the Clean Water Act or ''CWA''), the Safe Drinking Water Act (''SDWA'') (42 U.S.C. 300f et seq.), and the Marine Protection, Research, and Sanctuaries Act (also known as the Ocean Dumping Act or ''ODA'') (33 U.S.C. 1401 et seq.). Based on this review, EPA is today deleting a number of FWPCA and SDWA rules from the Code of Federal Regulations, as set forth below. These rules are being deleted either because they are obsolete or because they are redundant with other statutory or regulatory provisions. The rules deemed to be obsolete have expired by their own terms or by the terms of the statute or have been made obsolete by the completion of the grant projects to which they applied. In the case of the maximum contaminant level goal (''MCLG'') and maximum contaminant level (''MCL'') for nickel, EPA is removing those regulations from the CFR because they have been vacated (i.e., declared void and of no effect) by a court. Today's action does not make any legally substantive changes to the regulatory programs at issue.

Today's removal of rules from the CFR is not intended to affect the status of any civil or criminal actions that were initiated prior to June 29, 1995 or which may be initiated in the future to redress violations of the rules that occurred prior to today's action.

In addition to the regulations addressed in today's action, EPA's Office of Water has identified a number of other regulatory provisions that may provide opportunities for further streamlining beyond the deletion of obsolete and redundant regulations being accomplished today. The Agency intends to address those matters in future actions.

II. Obsolete Rules

A. Federal Water Pollution Control Act Rules

40 CFR Part 35, Subpart C—Grants for Construction of Wastewater Treatment Works. EPA is deleting Part 35, Subpart C, which comprises regulations promulgated under Section 8 of the Federal Water Pollution Control Act, as amended. Section 8 authorized EPA to award grants to municipalities for the construction of treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into any waters. Subpart C was made obsolete by passage of the CWA and its implementing regulations at 40 CFR Part 35, Subparts E, I and J, as well as completion of most of the projects funded by Subpart C grants, which date to the period prior to the passage of the CWA in 1972. Any remaining active grants will continue to be governed by the Subpart C regulations applicable at the time the grant was awarded.

40 CFR Part 35, Subpart D—Reimbursement Grants. EPA is deleting Part 35, Subpart D, which comprises regulations promulgated under Section 206 of the CWA, as amended. Section 206 authorized EPA to award grants to municipalities for reimbursement of state or local funds used for public sewage treatment works projects on which construction was initiated after June 30, 1956, but before July 1, 1973, and for which a grant was awarded under Section 8 of Public Law 84–660. Subpart D was made obsolete by completion of reimbursements to the eligible projects. In the unlikely event of a question regarding a section 206 reimbursement project, the Subpart D regulations in effect when the grant was awarded should be consulted.

Section 122.1(g). This provision simply recites portions of the Clean Water Act that give EPA authority over NPDES-related matters. This language is superfluous and is therefore deleted by today's rulemaking.

Sections 122.21(m)(3) and (n)(2) and 40 CFR Part 125 Subpart J—Extensions of Deadlines for Meeting Treatment Requirements. CWA sections 301(i)(1) and (2) allowed parties to seek extensions through permit issuance or modification of the statutory deadlines for meeting certain treatment requirements. EPA implemented these provisions in sections 122.21(n)(2) and (m)(3) of the regulations. Section 122.21(n)(2) allowed publicly owned treatment works (''POTWs'') that were experiencing delays in construction to seek extensions of the compliance deadlines. Section 122.21(n)(2) set a deadline of August 3, 1987 for POTWs to apply for an extension. Section 122.21(m)(3) allowed point source dischargers to seek their own extensions of treatment requirement deadlines in the event the POTW into which the source was to discharge was experiencing delays in construction. Section 122.21(m)(3) set a deadline of January 30, 1988 for point source dischargers to apply for these extensions. Because both of these dates have passed, these two regulatory provisions are obsolete and are deleted by today's rule.

In addition, 40 CFR Part 125 Subpart J (consisting of sections 125.90 through 125.97) sets forth the criteria for issuing these CWA section 301(i) extensions of time to POTWs and point source dischargers. Because these extensions are no longer available, this provision too is obsolete and is deleted by today's rule.

Section 122.21(m)(4) and Part 125, Subpart C—Variances For Innovative Technology. EPA is deleting Part 125, Subpart C, which comprises regulations promulgated under section 301(k) of the 1977 amendments to the Clean Water Act. Section 301(k) allowed EPA to grant compliance extensions to any industrial facility subject to a NPDES permit if the facility installed innovative technology. The last date to which compliance could be extended under section 301(k) was March 31, 1991. The regulations were challenged in court (*NRDC* v. *EPA*, No. 84–1500 (D.C. Cir.)). In light of the expiration of the statutory extension period, the court dismissed the case and ordered EPA to vacate the regulations. (See court order dated June 2, 1994.) Section 122.21(m)(4), which is also being removed, is a corresponding provision setting the time for applications to be submitted for section 301(k) variances.

Section 122.46(d)—Duration of Permits. The citation in section 122.46(d) to July 1, 1984 as a statutory compliance deadline is no longer accurate, having been revised by the 1987 Water Quality Act. This date is being deleted from section 122.46(d), since no reference to a specific date is necessary in that provision.

Sections 122.62(a)(14), 122.62(a)(17), and 122.63(f)—Causes for Permit Modification. Section 122.62(a)(14) lists as a cause for permit modification the need to conform to changes to sections 122.41(c) and (d) that EPA made pursuant to a judicial settlement agreement dated November 16, 1981 in connection with *NRDC* v. *EPA*, No. 80–1607. Section 122.62(a)(17) lists as a cause for permit modification the need to conform to certain other regulatory changes that EPA made in connection with that settlement agreement. Section 122.62(a)(17) also sets a deadline of January 24, 1985 for the permittee to apply for the modification. Also, section 122.63(f) allows minor permit modifications to be made without the formal Part 124 proceedings in order to conform the permit to certain regulatory changes that were issued on September 26, 1984.

In each of these three cases, over five years have passed since the relevant regulatory changes that would be the basis for a permit modification. Thus, all permits that would have needed a modification to incorporate these regulatory changes have expired, and all newer permits are already subject to these revised regulatory conditions and so need no modification. (Although some of those expired permits may not have been reissued but may currently be under administrative extension, EPA does not modify such permits; see sections 122.6 and 122.46(b)). Moreover, the deadline in section 122.62(a)(17) in particular to apply for permit modifications under that provision expired in 1985. Accordingly, these three provisions are obsolete and are deleted today.

Sections 123.43(b) and 124.58—Copies of Draft Permits. Section 123.43(b) is a requirement for State agencies that administer NPDES permit programs to transmit a second copy of draft general or proposed permits to personnel at EPA Headquarters (under section 123.43(a)(2), the State must provide the first copy to the Regional Administrator). Similarly, in the case of certain EPA-issued general permits, section 124.58 directs the Regional Administrators to send copies of the draft general permits to the Deputy Assistant Administrator for Water Enforcement at EPA Headquarters and gives that official an opportunity to object to the draft permits. The EPA Regional Office has primary responsibility in both of these cases. EPA believes that both of these requirements to notify the relevant Headquarters office in every case of a draft or proposed permit are unnecessary. (In addition, because of reorganization, the two Headquarters positions referred to in these provisions no longer exist in any event.) Therefore, EPA is removing these regulatory requirements (although the Region should consult with Headquarters on draft permits on an as needed basis). These provisions relate only to EPA's internal operating procedures, and therefore they are removed today without notice and comment pursuant to section 553(b)(3)(A) of the Administrative Procedure Act.

Section 140.3(h)—Marine Sanitation Devices. This section is no longer necessary, since it was designed to clarify which of the dates described in the rule between 1975 and 1980 were the ''effective dates'' for purposes of CWA section 312(g)(1). Since all dates described in the rule have passed, there can be no ambiguity as to whether the rule is effective for purposes of section 312(g)(1).

40 CFR Part 403—Pretreatment Regulations.

Section 403.1(c) (deadlines for submission of category determination requests and reports). This provision extended certain deadlines for the submission of requests by industrial users (requests to determine whether they were covered under various pretreatment standards, variance requests, and applications for net/gross adjustments) and for certain baseline reporting requirements on the part of industrial users. The deadlines and these extensions have long since lapsed, and so this provision is being deleted.

Section 403.5(f) (deadlines for compliance with national pretreatment standards). This provision is obsolete because the compliance deadlines it sets have long since lapsed.

Section 403.8(c), (d), & (f)(1)(vi)(A) (POTW pretreatment requirements). The last sentence of § 403.8(f)(1)(vi)(A) set deadlines for POTWs to submit requests for approvals of modified pretreatment programs. Because these deadlines have lapsed, this sentence is obsolete and is removed today. In addition, in § 403.8(c), EPA is removing an obsolete cross reference to pretreatment program requirements in § 403.10(d) (also being deleted today) for permits issued to POTWs in States not authorized to act as the approval authority. Finally, § 403.8(d), which authorizes compliance schedules in permits to allow time for POTWs to develop pretreatment programs once determined necessary, is obsolete by its terms, and so is removed and reserved. EPA intends to invite comment on appropriate compliance schedules in a future rulemaking.

Section 403.10(b), (c) and (d) (deadlines for modifications). Section 403.10(b) is obsolete because it allowed for an extension of time for States to modify their NPDES programs consistent with the 1977 amendments to the Clean Water Act. The 1977 amendments to the Clean Water Act required modification of any previously approved State NPDES program within one year (or two years if legal authority needed to be enacted) to include a State pretreatment program. The extension has lapsed. Section 403.10(d) provided for POTW permit modification after approval of State program modifications for pretreatment. Any permits that would be affected by section 403.10(d) have long since been issued and expired, thus, modification is unnecessary. Section 403.10(c) previously provided that failure of a State to seek approval of a State Pretreatment Program as provided in 403.10(b) and the failure of an approved State to administer its State Pretreatment Program in accordance with requirements of section 403.10 constituted grounds for withdrawal of NPDES program approval under Clean Water Act section 402(c)(3). Section 403.10(c) is also revised in today's rule simply by deleting the reference to obsolete § 403.10(b) and retaining the provision that failure to comply with the 1977 CWA NPDES program modification obligation is a ground for

withdrawal of the State's NPDES program.

Section 403.12(b) (baseline reporting requirements for industrial users). The second sentence of section 403.12(b) allowed an Industrial User of a POTW to forego resubmission of baseline monitoring reports where reports had been submitted previously according to a now-defunct reporting regulation. This regulatory provision had allowed for transition to new reporting requirements. The sentence is now obsolete because the time for any such reporting required under section 403.12 has lapsed and, in the event any new pretreatment standards are established in the future, Industrial Users would not be able to use this provision because they would not have been required to submit the earlier reports.

Section 403.13(g)(2)(i) (deadlines for variances from pretreatment standards). Section 403.13(g)(2)(i) is obsolete because it established a July 3, 1989, deadline for submission of requests for variances from categorical Pretreatment Standards issued by EPA prior to February 4, 1987. That deadline has now lapsed.

Part 403, Appendix B (list of priority pollutants). Appendix B lists the 65 priority pollutants developed pursuant to the Consent Decree in *Natural Resources Defense Council, Inc.* v. *Costle.* This list is now redundant with the list of priority pollutants published at 40 CFR § 401.15. Regulations in Part 403 do not otherwise refer to Appendix B.

Part 403 Appendix C (list of industrial categories). Appendix C lists the industrial categories subject to national categorical pretreatment standards pursuant to the Consent Decree in *Natural Resources Defense Council, Inc.* v. *Costle.* The list is incomplete and obsolete because EPA has now published national effluent guidelines and pretreatment standards for other industrial categories. Regulations in Part 403 do not otherwise refer to Appendix C.

Parts 405 To 460—Effluent Limitations Guidelines and Standards.

1. *FDF Variances.* An industrial discharger subject to effluent limitations guidelines and standards promulgated by EPA under the Clean Water Act may qualify for a ''fundamentally different factors'' (''FDF'') variance that would allow alternative limitations to those imposed in the effluent guidelines. Subpart D of 40 CFR Part 125 contains the criteria and standards for FDF variances, including the procedures for applying to EPA for such variances. However, the BPT (best practicable technology) provisions of a large number of effluent guidelines themselves (contained in 40 CFR Parts 405 to 460) also discuss the availability of FDF variances and the procedures for applying for them (see, e.g., the first paragraph of section 405.12). In these particular effluent guidelines, this lengthy discussion of FDF variances generally is repeated in the BPT provision for each separate subcategory. Thus, this virtually identical discussion of FDF variances occurs several times within a particular effluent guideline in many cases and a very large number of times over the entire set of effluent guidelines. All of this language in the effluent guidelines is superfluous and redundant with the criteria and standards for FDF variances contained in Part 125, Subpart D. Therefore, this language is deleted today from each place that it occurs in the effluent guidelines. In its place in each affected provision, EPA has added a cross reference to Part 125, Subpart D.

2. *Pretreatment Requirements.* EPA is similarly deleting today obsolete language concerning pretreatment requirements that currently exists in a large number of individual effluent guidelines provisions. In the 1970's, when many of the earlier effluent guidelines were promulgated, the general pretreatment requirements for dischargers to publicly owned treatment works (''POTWs'') were contained in 40 CFR Part 128. In 1978, EPA promulgated a revised set of comprehensive pretreatment regulations in 40 CFR Part 403, which superseded the Part 128 regulations. Therefore, EPA deleted Part 128 from the Code of Federal Regulations. See 42 Fed. Reg. 6476 (Feb. 2, 1977) and 43 Fed. Reg. 27736 (June 26, 1978). However, many of the pretreatment standards for existing sources (''PSES'') and pretreatment standards for new sources (''PSNS'') in the earlier effluent guidelines contain cross-references to the Part 128 pretreatment regulations. To date, those cross-references have not been updated to reflect the replacement of Part 128 by Part 403. EPA is accomplishing this update today.

Typically, the PSES provisions in these effluent guidelines indicate first that the Part 128 pretreatment standards apply, which would include the specific pretreatment prohibitions in section 128.131 (prohibiting wastes that would interfere with POTW performance by causing fires, corrosion, etc.). See, e.g., 40 CFR § 405.14. These specific prohibitions are now contained in Part 403 (see section 403.5), so the reference to section 128.131 is obsolete. Next, these PSES provisions typically set out a table of pretreatment standards that apply to the particular subcategory and provide that these standards take the place of the Part 128 pretreatment standards for ''incompatible'' pollutants. Accordingly, in the PSES provisions of these effluent guidelines, EPA is retaining the table of PSES standards, but is removing all references to the Part 128 regulations as obsolete. EPA is adding language that simply cross-references the requirements of Part 403.

The PSNS provisions in these guidelines also reference the specific prohibitions in section 128.131 and then replace the Part 128 pretreatment standards for ''incompatible'' pollutants with specific standards. See, e.g., 40 CFR § 405.16. Generally, however, the replacement standards consist of cross-references to provisions that do not contain any limitations for ''incompatible'' pollutants as defined in former Part 128. Therefore, to achieve parallel, updated language, the revisions today to these PSNS standards simply cross-reference the Part 403 requirements and contain no other limitations.

As with the other items in today's notice, these revisions simply concern obsolete or redundant language and effect no substantive changes to the FDF variance provisions or the PSES and PSNS provisions in Parts 405 through 460.

B. Safe Drinking Water Act Rules

Public Water Systems

Section 141.11—MCLs For Inorganic Contaminants. Pursuant to section 1412 of the Safe Drinking Water Act, EPA set maximum contaminant levels (''MCLs'') in section 141.11(b) of the regulations for a list of eight inorganic contaminants. Subsequently, in two 1991 rulemakings (56 FR 3526, January 30, 1991 and 56 FR 30266, July 1, 1991) EPA revised the MCLs for six of these contaminants—cadmium, chromium, mercury, nitrate, selenium, and barium. The 1991 rulemakings placed the revised MCLs in section 141.62(b) and made them effective 18 months after promulgation. The 1991 rulemakings also established these effective dates for the new regulations as the dates beyond which the original MCLs in section 141.11(b) for these six contaminants would no longer be effective (January 1, 1993 for barium and July 30, 1992 for the others). Because these dates have passed, the MCLs for these six contaminants in 141.11(b) are obsolete and are deleted today. The language of sections 141.11(a) and (b) is revised to reflect these changes.

Section 141.11(c), which contains the MCL for fluoride, is deleted today

because it is redundant with the MCL for fluoride that is now contained in section 141.62(b). Section 141.11(d), which addresses an increased MCL for nitrate that may be allowed at the discretion of the State, is unchanged by today's action and remains in effect.

Also, EPA revised its regulations for lead on June 7, 1991 (56 FR 26460) and in that rulemaking established December 7, 1992 as the date beyond which the existing MCL for lead in section 141.11(b) would no longer be effective. Because that date has passed, the MCL for lead in 141.11(b) is obsolete and is deleted today.

The MCL for arsenic in section 141.11(b) is unaffected by today's rulemaking and remains in full force and effect.

Sections 141.51(b), 141.62(b)(14), 141.23(a)(4)(i)(Table), and 141.32(e)(56)—Nickel Drinking Water Regulations. By today's notice, EPA is alerting the public that the Agency has requested and received a court order vacating and remanding the MCL and MCLG (maximum contaminant level goal) for nickel. The remand has already taken effect; today's action simply removes the nickel MCLG and MCL from the Code of Federal Regulations.

On July 17, 1992, EPA promulgated an MCLG of 0.1 mg/L for nickel under the Safe Drinking Water Act (''SDWA''). 57 FR 31776. The MCLG is a non-enforceable health goal that is set at a level at which ''no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety'' (SDWA section 1412(b)(4)). In the same rulemaking, EPA also promulgated a national primary drinking water regulation (''NPDWR'') for nickel, consisting of an MCL of 0.1 mg/L, associated monitoring, analytical testing, and public notice requirements, and identification of best available treatment technologies for nickel. The MCL is an enforceable limit that is set as close to the MCLG as is feasible (SDWA section 1412(b)(4)).

In September, 1992, the Nickel Development Institute (a nickel trade association) and other industry parties filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit challenging the MCLG and MCL for nickel. *Nickel Development Institute, et al.* v. *EPA* (No. 92–1407) and *Specialty Steel Industry of the United States* v. *Browner* (No. 92–1410). The petitioners raised objections over EPA's methodology for determining the MCLG for nickel. Specifically, they raised questions concerning the derivation of the relative source contribution (''RSC'') factor and the need for a 3-fold uncertainty factor that EPA applied due to the lack of adequate data on the effects of nickel ingestion on reproductive systems. Because the MCL for nickel was based directly on the MCLG, the petitioners also challenged the nickel MCL.

EPA and the petitioners entered into discussions in an attempt to settle this litigation but could not agree on the merits of the petitioners' challenges. Nevertheless, EPA has agreed that it did not fully address in the public record the petitioner's comments on the proposed methodology for deriving the MCLG for nickel. Therefore, it is in the public interest to conduct further rulemaking to obtain a full public airing of those issues. Accordingly, EPA has agreed to take a remand of the MCLG and MCL for nickel.

The Agency notes that as of the 1992 rulemaking, projections from available data estimated that only seven public drinking water systems nationwide were expected to have nickel levels exceeding the MCL of 0.1 mg/L. Therefore, this remand of the nickel MCL is not expected to have a significant effect nationwide on the levels of nickel in public water systems.

Terms of the remand order. Accordingly, on February 9, 1995, EPA and the nickel industry petitioners filed a joint motion for a voluntary remand of the nickel MCL and MCLG. By orders of February 23, 1995 and March 6, 1995, the court granted this motion and vacated and remanded the following regulations (and dismissed the lawsuit):

1. The MCLG for nickel listed in 40 CFR 141.51(b);

2. The MCL for nickel listed in 40 CFR 141.62(b)(14) and 141.23(a)(4)(i)(Table); and

3. 40 CFR 141.32(e)(56).

All other portions of 40 CFR 141.51(b) and 141.23(a)(4)(i)(Table) are not affected by the court's order.

The MCLGs for contaminants other than nickel listed in § 141.51(b) remain, of course, in full force and effect. Similarly, as to the Table in § 141.23(a)(4)(i), the court vacated only the MCL for nickel, leaving the sampling methodologies and detection limits for nickel (as well as the MCLs, sampling methodologies and detection limits for the other contaminants) in full force and effect, since they were not at issue in the litigation. At EPA's request, the court also vacated the public notice language in § 141.32(e)(56) for nickel because it mentioned the nickel MCL and public notice language is not necessary until the Agency reestablishes an MCL for nickel. No other aspects of the national primary drinking water regulations for nickel were vacated, including monitoring requirements and identification of best available technologies for nickel. EPA emphasizes that monitoring and analytical testing requirements for nickel remain in full force and effect.

The nickel MCLG and MCL should be considered vacated and not in effect as of February 23, 1995, the date of the court's original remand order. Today's action merely formally removes these regulations from the Code of Federal Regulations. Under the Administrative Procedure Act, EPA finds that public comment on today's action is unnecessary, since this remand has been ordered by the court. See 5 U.S.C. § 553(b). Therefore, EPA is issuing today's action as a final rule rather than as a proposed rule for comment.

Health Advisory on Nickel. EPA does not currently have a schedule for reestablishing an MCLG and MCL for nickel. EPA has initiated an effort to prioritize all its drinking water regulatory development activities in order to maximize risk reduction potential. The priority of the nickel reproposal is being considered as part of that effort. To provide guidance for the period prior to new regulations for nickel, the Office of Water has recently issued an updated Health Advisory for nickel. A copy of the Health Advisory can be obtained by contacting the Safe Drinking Water Hotline, whose toll free number is 1–800–426–4791. For further information on Health Advisories, contact Barbara Corcoran, Health Advisory Project Manager at (202) 260–1332.

One of the primary issues raised by the petitioners, as noted, concerned EPA's derivation of the RSC factor used in establishing the nickel MCLG. Since the litigation was filed, EPA's Office of Water has formed a cross-Agency workgroup to reexamine its RSC/human exposure apportionment policy, as noted at the front of the Health Advisory. The charge of the workgroup has since expanded to focus on the development of a consistent Agency-wide approach for assessing total human exposure to a contaminant and, where appropriate, allocating the Reference Dose (RfD) among the media of concern. This workgroup has or will be seeking input from EPA's Science Advisory Board, Science Policy Council and Risk Assessment Forum. EPA expects to publish proposed revisions to this policy in the **Federal Register** for public comment with the revision to the human health methodology for determining water quality criteria. Subsequent to this remand, further rulemaking on nickel will allow the Agency to encompass its ongoing efforts on the RSC issues and will allow a full

public airing of this and all other issues concerning the methodology for deriving the MCLG for nickel, including any new information or analysis that may exist as to the carcinogenic potential of ingested nickel compounds. In future rulemaking on nickel, EPA will consider any new information that has become available since EPA established the MCLG and MCL for nickel.

Section 141.23(k)—Technical Correction to Inorganic Chemical Sampling and Analytical Requirements. EPA is also making one technical correction of a typographical error today. In section 141.23(k)(3)(ii), the analytical acceptance limit for antimony is listed as ''6#30 at ≥ 0.006 mg/l''. This was a typographical error—as indicated in the **Federal Register** issuance of this rule, the limit should have been listed as ''±30 at ″ 0.006 mg/l'' (see 57 FR 31801, July 17, 1992). Today's rule makes this correction. Notice and comment on this minor technical correction are unnecessary (see section 553(b)(3) of the Administrative Procedure Act).

Section 141.34—Public Notice Requirements for Lead. 40 CFR section 141.34 required public water systems to provide, by June 19, 1988, a one-time notice to users that may be affected by lead in drinking water. Since the deadline for providing this notice passed about seven years ago, and the Agency subsequently promulgated comprehensive lead public education provisions in its national primary drinking water regulations for lead (see 40 CFR § 141.85), the Agency is deleting section 141.34 as obsolete.

Underground Injection Control

Section 144.15—Assessment of Class V wells. Section 144.15 required the Director to submit a report and recommendations to EPA regarding the inventory and assessment of Class V wells in the State within three years of the approval of the State UIC program. The assessment of Class V wells has now been completed. Accordingly, EPA is removing section 144.15.

Section 144.23(b)(2)—Closure of Class IV wells. Section 144.23(b)(2) required the owner or operator of a Class IV well to submit to the Regional Administrator for approval a plan for plugging or otherwise closing and abandoning the well. These plans were required to be submitted within 60 days after promulgation of the UIC program in the State. Because all State programs have now been established (in most cases this was accomplished by May or November of 1985), section 144.23(b)(2) is now obsolete and is being removed.

Section 146.52—Class V Inventory and Assessment. Section 146.52 required the Director to submit a report to EPA regarding the inventory and assessment of Class V wells in a State within three years of the approval of the State UIC program. The inventory and assessment of Class V wells has been completed. Accordingly, EPA is removing section 146.52.

Section 148.1(c)(4)—Scope and Applicability. Section 148.1 (promulgated pursuant to authority under section 3004 of the Resource Conservation and Recovery Act) identifies hazardous wastes that are restricted from disposal in Class I hazardous waste injection wells by the land disposal restrictions of the Hazardous and Solid Waste Amendments (HSWA) and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected. Section 148.1(c)(4) provides that contaminated soil and debris from CERCLA and RCRA cleanup actions may continue to be injected until November 8, 1988. EPA is removing section 148.1(c)(4) because this date has passed and the rule is, therefore, obsolete.

III. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule. 5 U.S.C. § 553(b). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary. 5 U.S.C. § 553(b)(3)(B).

EPA has determined that providing prior notice and opportunity for comment on the deletion of these rules from the CFR is unnecessary. For the reasons discussed above, these rules are obsolete or are redundant with other statutory or regulatory requirements, or simply codify court-ordered remands. Thus, withdrawing them from the CFR has no legal impact and merely codifies their current legal status in the case of the obsolete and remanded rules. (In a small number of cases above, EPA has provided independent reasons for a good cause finding that notice and comment are unnecessary.)

For the same reasons, EPA believes there is good cause for making the removal of these rules from the CFR immediately effective. See 5 U.S.C. § 553(d).

IV. Analyses under E.O. 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act and the Paperwork Reduction Act

Because today's action simply withdraws rules from the CFR that are obsolete or that have already been vacated by a court, or removes regulatory language that is redundant with other statutory or regulatory provisions, this action has no regulatory impact and is not a ''significant'' regulatory action within the meaning of E.O. 12866. It also does not impose any Federal mandate on State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995. For the same reasons, pursuant to the Regulatory Flexibility Act, I certify that this action would not have a significant economic impact on a substantial number of small entities. Finally, deletion of these rules from the CFR does not affect requirements under the Paperwork Reduction Act.

List of Subjects

40 CFR Part 35

Grant programs—environmental protection, Waste Treatment and Disposal, Water Pollution Control.

40 CFR Parts 122, 123 and 124

Administrative practice and procedure, Water pollution control.

40 CFR Part 125

Water pollution control.

40 CFR Part 140

Sewage disposal, Vessels.

40 CFR Part 141

Chemicals, Water supply.

40 CFR Part 144 and 146

Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 148

Hazardous waste.

40 CFR Part 403

Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 405

Dairy products, Waste treatment and disposal, Water pollution control.

40 CFR Part 406

Grains, Waste treatment and disposal, Water pollution control.

40 CFR Part 407

Fruits, Vegetables, Waste treatment and disposal, Water pollution control.

40 CFR Part 408

Seafood, Waste treatment and disposal, Water pollution control.

40 CFR Part 409

Sugar, Waste treatment and disposal, Water pollution control.

40 CFR Part 411

Cement Industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 412

Feedlots, Livestock, Waste treatment and disposal, Water pollution control.

40 CFR Part 417

Soap and detergent industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 418

Fertilizers, Waste treatment and disposal, Water pollution control.

40 CFR Part 424

Iron, Metals, Waste treatment and disposal, Water pollution control.

40 CFR Part 426

Glass and glass products, Waste treatment and disposal, Water pollution control.

40 CFR Part 427

Asbestos, Waste treatment and disposal, Water pollution control.

40 CFR Part 428

Rubber and rubber products, Tires, Waste treatment and disposal, Water pollution control.

40 CFR Part 432

Meat and meat products, Waste treatment and disposal, Water pollution control.

40 CFR Part 435

Oil and gas exploration, Waste treatment and disposal, Water pollution control.

40 CFR Part 436

Mines, Waste treatment and disposal, Water pollution control.

40 CFR Part 443

Paving and roofing materials, Waste treatment and disposal, Water pollution control.

40 CFR Part 446

Paint industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 447

Ink industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 454

Chemicals, Waste treatment and disposal, Water pollution control.

40 CFR Part 455

Chemicals, Pesticides and pests, Waste treatment and disposal, Water pollution control.

40 CFR Part 457

Explosives, Waste treatment and disposal, Water pollution control.

40 CFR Part 458

Carbon industry, Waste treatment and disposal, Water pollution control.

40 CFR Part 460

Hospitals, Waste treatment and disposal, Water pollution control.

Dated: June 6, 1995.

Robert Perciasepe,

Assistant Administrator for Water.

For the reasons set out in the preamble, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a), and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 2002(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

Subpart C to Part 35 [Removed and reserved]

2. Subpart C is removed and reserved.

Subpart D to Part 35 [Removed and reserved]

3. Subpart D is removed and reserved.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.1 [Amended]

2. Section 122.1(g) is removed.

§ 122.2 [Amended]

3. Sections 122.21(m)(3), (m)(4) and (n)(2) are removed and reserved.

§ 122.46 [Amended]

4. In § 122.46(d), the words ''(July 1, 1984)'' are removed.

§ 122.62 [Amended]

5. Sections 122.62(a)(14) and 122.62(a)(17) are removed and reserved.

§ 122.63 [Amended]

6. Section 122.63(f) is removed and reserved.

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.43 [Amended]

2. Section 123.43(b) is removed and reserved.

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.; Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; Clean Water Act. 33 U.S.C. 1251 et seq.; Clean Air Act, 42 U.S.C. 7401 et seq.

§ 124.58 [Removed and reserved]

2. Section 124.58 is removed and reserved.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 125 continues to read as follows:

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq., unless otherwise noted.

Subpart C to Part 125 [Removed and reserved]

2. Subpart C is removed and reserved.

Subpart J to Part 125 [Removed and reserved]

3. Subpart J is removed and reserved.

PART 140—MARINE SANITATION DEVICE STANDARD

1. The authority citation for part 140 continues to read as follows:

Authority: Sec. 312, as added Oct. 18, 1972, Pub. L. 92–500, sec. 2, 86 Stat. 871. Interpret or apply sec. 312(b)(1), 33 U.S.C. 1322(b)(1).

§ 140.3 [Amended]

2. Section 140.3(h) is removed.

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. In § 141.11, paragraphs (a) and (b) are revised (the table in paragraph

(b) is removed) to read as follows, and paragraph (c) is removed and reserved:

§ 141.11 Maximum contaminant levels for inorganic chemicals.

(a) The maximum contaminant level for arsenic applies only to community water systems. Compliance with the MCL for arsenic is calculated pursuant to § 141.23.

(b) The maximum contaminant level for arsenic is 0.05 milligrams per liter.

(c) [Reserved]

* * * * *

§ 141.23 [Amended]

3. In § 141.23(a)(4)(i), the entry for nickel in the Table is amended by removing and reserving the listed ''MCL (mg/l)'' for nickel; all other parts of the entry for nickel in the Table remain unchanged.

4. In § 141.23(k)(3)(ii), the Acceptance Limit for Antimony in the Table is revised to read as follows: ''±30 at ≥0.006 mg/l''.

§ 141.32 [Amended]

5. Section 141.32(e)(56) is removed and reserved.

§ 141.34 [Amended]

6. Section 141.34 is removed and reserved.

§ 144.51 [Amended]

7. In § 141.51(b), the line in the Table listing the contaminant ''Nickel'' and the MCLG for nickel is removed.

§ 141.62 [Amended]

8. In § 141.62(b), entry (14) in the Table is removed and reserved.

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 144.15 [Removed and reserved]

2. Section 144.15 is removed and reserved.

§ 144.23 [Amended]

3. Section 144.23(b)(2) is removed and reserved.

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for part 146 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f et seq.; Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 146.52

[Removed]

2. Section 146.52 is removed.

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

§ 148.1 [Removed]

2. Section 148.1(c)(4) is removed.

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95–217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405 and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92–500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100–4).

§ 403.1 [Amended]

2. Section 403.1(c) is removed.

§ 403.5 [Amended]

3. Section 403.5(f) is removed.

4. Section 403.8(c) is revised and the text of paragraph (d) is removed and reserved to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(c) *Incorporation of approved programs in permits.* A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in paragraph (b) of this section. If the POTW is located in a State which has an approved State permit program under section 402 of the Act and an approved State pretreatment program in accordance with § 403.10, or if the POTW is located in a State which does not have an approved permit program under section 402 of the Act, the POTW's NPDES Permit will be reissued or modified by the NPDES State or EPA, respectively, to incorporate the approved Program conditions as enforceable conditions of the Permit. The modification of a POTW's NPDES permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedures in § 403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63.

(d) *Incorporation of compliance schedules in permits.* [Reserved].

* * * * *

§ 403.8 [Amended]

4(a). The last sentence of § 403.8(f)(1)(vi)(A) is removed.

5. Section 403.10 is amended by removing and reserving paragraphs (b) and (d) and revising paragraph (c) to read as follows:

§ 403.10 Development and submission of NPDES State pretreatment programs.

* * * * *

(b) [Reserved]

(c) *Failure to request approval.* Failure of an NPDES State with a permit program approved under section 402 of the Act prior to December 27, 1977, to seek approval of a State Pretreatment Program and failure of an approved State to administer its State Pretreatment Program in accordance with the requirements of this section constitutes grounds for withdrawal of NPDES program approval under section 402(c)(3) of the Act.

(d) [Reserved]

* * * * *

§ 403.12 [Amended]

6. The second sentence after the heading of § 403.12(b) introductory text is removed.

7. Section 403.13 is amended by revising paragraph (g)(2) to read as follows:

§ 403.13 Variances from categorical pretreatment standards for fundamentally different factors.

* * * * *

(g) *Application deadline.*

(1) * * *

(2) In order to be considered, a request for a variance must be submitted no later than 180 days after the date on which a categorical Pretreatment Standard is published in the **Federal Register**.

(3) * * *

* * * * *

Appendix B [Removed and reserved]

8. Appendix B is removed and reserved.

Appendix C [Removed and reserved]

9. Appendix C is removed and reserved.

PART 405—[AMENDED]

In Part 405:

1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c) of the Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816, et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 405.12 is amended by revising the introductory text to read as follows:

§ 405.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 405.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 405.16 is revised to read as follows:

§ 405.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 405.22 is amended by revising the introductory text to read as follows:

§ 405.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 405.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 405.26 is revised to read as follows:

§ 405.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 405.32 is amended by revising the introductory text to read as follows:

§ 405.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 405.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 405.36 is revised to read as follows:

§ 405.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 405.42 is amended by revising the introductory text to read as follows:

§ 405.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 405.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 405.46 is revised to read as follows:

§ 405.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 405.52 is amended by revising the introductory text to read as follows:

§ 405.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 405.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 405.56 is revised to read as follows:

§ 405.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 405.62 is amended by revising the introductory text to read as follows:

§ 405.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 405.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 405.66 is revised to read as follows:

§ 405.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 405.72 is amended by revising the introductory text to read as follows:

§ 405.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 405.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 405.76 is revised to read as follows:

§ 405.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 405.82 is amended by revising the introductory text to read as follows:

§ 405.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 405.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 405.86 is revised to read as follows:

§ 405.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 405.92 is amended by revising the introductory text to read as follows:

§ 405.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 405.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 405.96 is revised to read as follows:

§ 405.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 405.102 is amended by revising the introductory text to read as follows:

§ 405.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 405.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 405.106 is revised to read as follows:

§ 405.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 405.112 is amended by revising the introductory text to read as follows:

§ 405.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 405.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 405.116 is revised to read as follows:

§ 405.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 405.122 is amended by revising the introductory text to read as follows:

§ 405.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 405.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 405.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 405.126 is revised to read as follows:

§ 405.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 406—[AMENDED]

In Part 406:

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 406.12 is amended by removing paragraph (a), redesignating

paragraph (b) as new paragraph (a), redesignating paragraph (c) as new paragraph (b), and revising the text above the table (the table remains unchanged) in the newly redesignated paragraph (a). The text in the newly redesignated paragraph (b) is amended by removing the words ''paragraph (b)'' and inserting in their place the words ''paragraph (a)''. The revised text reads as follows:

§ 406.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions in paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 406.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 406.16 is amended by revising the introductory text (the table and paragraph (a) are unchanged) to read as follows:

§ 406.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the provisions set forth in paragraph (a) of this section apply, as well as the following pretreatment standard which establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

5. Section 406.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 406.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 406.26 is revised to read as follows:

§ 406.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 406.32 is revised to read as follows:

§ 406.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

9. Section 406.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 406.36 is revised to read as follows:

§ 406.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 406.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 406.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned

treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 406.46 is revised to read as follows:

§ 406.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 406.52 is revised to read as follows:

§ 406.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

15. Section 406.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 406.56 is revised to read as follows:

§ 406.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 406.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 406.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 406.66 is revised to read as follows:

§ 406.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 406.72 is revised to read as follows:

§ 406.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

21. Section 406.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

22. Section 406.82 is revised to read as follows:

§ 406.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

23. Section 406.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

24. Section 406.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the

application of the best practicable control technology currently available (BPT):

* * * * *

25. Section 406.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

26. Section 406.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 406.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 406.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 407—[AMENDED]

In Part 407:

1. The authority citation for part 407 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 407.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 407.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 407.16 is revised to read as follows:

§ 407.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 407.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 407.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 407.26 is revised to read as follows:

§ 407.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 407.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 407.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 407.36 is revised to read as follows:

§ 407.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 407.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 407.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 407.46 is revised to read as follows:

§ 407.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 407.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 407.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 407.56 is revised to read as follows:

§ 407.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 407.62 is amended by revising the introductory text to read as follows:

§ 407.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 407.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

19. Section 407.66 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

20. Section 407.72 is amended by revising the introductory text to read as follows:

§ 407.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 407.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

22. Section 407.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

23. Section 407.82 is amended by revising the introductory text to read as follows:

§ 407.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 407.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by any existing point source subject to the provisions of this subpart.

* * * * *

25. Section 407.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 407.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 408—[AMENDED]

In Part 408:

1. The authority citation for part 408 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 408.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 408.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 408.16 is revised to read as follows:

§ 408.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 408.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 408.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 408.26 is revised to read as follows:

§ 408.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 408.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 408.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 408.36 is revised to read as follows:

§ 408.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 408.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 408.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 408.46 is revised to read as follows:

§ 408.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 408.52 is revised to read as follows:

§ 408.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

15. Section 408.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 408.56 is revised to read as follows:

§ 408.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 408.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 408.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 408.66 is revised to read as follows:

§ 408.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 408.72 is revised to read as follows:

§ 408.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of

effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

21. Section 408.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 408.76 is revised to read as follows:

§ 408.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 408.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 408.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 408.86 is revised to read as follows:

§ 408.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 408.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 408.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 408.96 is revised to read as follows:

§ 408.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 408.102 is revised to read as follows:

§ 408.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): No pollutants may be discharged which exceed 1.27 cm (0.5 inch) in any dimension.

30. Section 408.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 408.106 is revised to read as follows:

§ 408.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 408.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 408.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 408.116 is revised to read as follows:

§ 408.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 408.122 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 408.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 408.126 is revised to read as follows:

§ 408.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

38. Section 408.132 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

39. Section 408.134 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.134 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

40. Section 408.136 is revised to read as follows:

§ 408.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

41. Section 408.142 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

42. Section 408.144 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.144 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

43. Section 408.146 is revised to read as follows:

§ 408.146 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

44. Section 408.152 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; and removing in redesignated paragraph (b) the words ''§ 408.152(b)(1)'' and adding in their place the words ''§ 408.152(a)'':

§ 408.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

45. Section 408.154 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.154 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

46. Section 408.156 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.156 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

47. Section 408.162 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; and in newly redesignated paragraph (b), the words ''§ 408.162(b)(1)'' are removed and the words ''§ 408.162(a)'' are inserted in their place to read as follows:

§ 408.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

48. Section 408.164 is amended by revising the text above the table to read as follows:

§ 408.164 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

49. Section 408.166 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.166 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

50. Section 408.172 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words ''§ 408.172(b)(1)'' are removed and the words ''§ 408.172(a)'' are inserted in their place to read as follows:

§ 408.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

51. Section 408.174 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.174 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

52. Section 408.176 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.176 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

53. Section 408.182 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

54. Section 408.184 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.184 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

55. Section 408.186 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.186 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

56. Section 408.192 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

57. Section 408.194 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.194 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

58. Section 408.196 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.196 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

59. Section 408.202 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words ''§ 408.202(b)(1)'' are removed and the words ''§ 408.202(a)'' are inserted in their place to read as follows:

§ 408.202 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

60. Section 408.204 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.204 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

61. Section 408.206 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.206 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

62. Section 408.212 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.212 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

63. Section 408.214 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.214 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

64. Section 408.216 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.216 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the

following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

65. Section 408.222 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

66. Section 408.224 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.224 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

67. Section 408.226 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.226 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

68. Section 408.232 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

69. Section 408.234 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.234 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

70. Section 408.236 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.236 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

71. Section 408.242 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

72. Section 408.244 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.244 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

73. Section 408.246 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.246 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

74. Section 408.252 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of

effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

75. Section 408.254 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.254 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

76. Section 408.256 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.256 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

77. Section 408.262 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

78. Section 408.264 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.264 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

79. Section 408.266 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.266 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

80. Section 408.272 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.272 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

81. Section 408.274 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.274 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

82. Section 408.276 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.276 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

83. Section 408.282 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b), the words ''§ 408.282(b)(1)'' are removed and the words ''§ 408.282(a)'' are inserted in their place to read as follows:

§ 408.282 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

84. Section 408.284 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.284 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

85. Section 408.286 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.286 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

86. Section 408.292 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words ''§ 408.292(b)(1)'' and adding in their place the words ''§ 408.292(a)'' are inserted in their place to read as follows:

§ 408.292 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

87. Section 408.294 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.294 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

88. Section 408.296 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.296 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

89. Section 408.302 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.302 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

90. Section 408.304 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.304 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

91. Section 408.306 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.306 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

92. Section 408.312 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; revising the newly designated introductory text to the section to read as set forth below; in newly redesignated paragraph (b) the words ''§ 408.312(b)(1)'' are removed and the words ''§ 408.312(a)'' are inserted in their place to read as follows.

§ 408.312 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

93. Section 408.314 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.314 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

94. Section 408.316 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 408.316 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

95. Section 408.322 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

96. Section 408.324 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.324 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

97. Section 408.326 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.326 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

98. Section 408.332 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.332 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

99. Section 408.334 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.334 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

100. Section 408.336 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 408.336 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 409—[AMENDED]

In Part 409:

1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307 (c) and (d), and 316(b) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317 (c), and 1326(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 409.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

3. Section 409.16 is revised to read as follows:

§ 409.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 409.22 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 409.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 409.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

6. Section 409.26 is revised to read as follows:

§ 409.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

7. Section 409.32 is amended by removing paragraph (a); redesignating paragraphs (b) introductory text, (b)(1) and (b)(2) as introductory text to the section and paragraphs (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 409.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

8. Section 409.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

9. Section 409.36 is revised to read as follows:

§ 409.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

10. Section 409.42 is amended by revising the introductory text to read as follows:

§ 409.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 409.52 is amended by revising the introductory text to read as follows:

§ 409.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

* * * * *

12. Section 409.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 409.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 409.72 is amended by revising the introductory text to read as follows:

§ 409.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

* * * * *

14. Section 409.82 is amended by revising the introductory text to read as follows:

§ 409.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 411—[AMENDED]

In Part 411:

1. The authority citation for part 411 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 411.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall

achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 411.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 411.16 is revised to read as follows:

§ 411.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 411.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 411.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 411.26 is revised to read as follows:

§ 411.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 411.32 is amended by removing the introductory text and revising paragraph (a) (the table remains unchanged) to read as follows:

§ 411.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 411.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 411.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 411.36 is revised to read as follows:

§ 411.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 412—[AMENDED]

In Part 412:

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), and 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 412.12 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 412.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

* * * * *

3. Section 412.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 412.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 412.16 is revised to read as follows:

§ 412.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 412.22 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) to read as follows:

§ 412.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 417—[AMENDED]

In Part 417:

1. The authority citation for part 417 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act as amended, (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c), 86 Stat. 816 et seq., Pub. L. 92–500.

2. Section 417.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 417.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 417.16 is revised to read as follows:

§ 417.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 417.22 is amended by revising the introductory text to read as follows:

§ 417.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 417.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 417.26 is revised to read as follows:

§ 417.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 417.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 417.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 417.36 is revised to read as follows:

§ 417.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 417.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 417.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 417.46 is revised to read as follows:

§ 417.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 417.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 417.54 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 417.56 is revised to read as follows:

§ 417.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 417.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 417.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 417.66 is revised to read as follows:

§ 417.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 417.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 417.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 417.76 is revised to read as follows:

§ 417.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 417.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

24. Section 417.84 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.84 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

25. Section 417.86 is revised to read as follows:

§ 417.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

26. Section 417.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

27. Section 417.94 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.94 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

28. Section 417.96 is revised to read as follows:

§ 417.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

29. Section 417.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 417.104 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.104 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

31. Section 417.106 is revised to read as follows:

§ 417.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

32. Section 417.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

33. Section 417.114 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.114 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

34. Section 417.116 is revised to read as follows:

§ 417.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

35. Section 417.122 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

36. Section 417.124 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.124 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

37. Section 417.126 is revised to read as follows:

§ 417.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

38. Section 417.132 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 417.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

39. Section 417.134 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.134 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

40. Section 417.136 is revised to read as follows:

§ 417.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

41. Section 417.142 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

42. Section 417.144 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.144 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

43. Section 417.146 is revised to read as follows:

§ 417.146 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

44. Section 417.152 is amended by revising the introductory text to read as follows:

§ 417.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

45. Section 417.156 is amended by revising the introductory text to read as follows:

§ 417.156 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

46. Section 417.162 is amended by revising the introductory text to read as follows:

§ 417.162 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

47. Section 417.166 is amended by revising the introductory text to read as follows:

§ 417.166 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

48. Section 417.172 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.172 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

49. Section 417.176 is amended by revising the introductory text to read as follows:

§ 417.176 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned

treatment works by a new source subject to the provisions of this subpart.

* * * * *

50. Section 417.182 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

51. Section 417.186 is amended by revising the introductory text to read as follows:

§ 417.186 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standards establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart.

* * * * *

52. Section 417.192 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

53. Section 417.194 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 417.194 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

54. Section 417.196 is revised to read as follows:

§ 417.196 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

PART 418—[AMENDED]

In Part 418:

1. The authority citation for part 418 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 418.12 is amended by revising the introductory text to read as follows:

§ 418.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 418.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 418.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 418.32 is amended by revising the introductory text to read as follows:

§ 418.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 418.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 418.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 418.52 is amended by revising the introductory text to read as follows:

§ 418.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 418.62 is revised to read as follows:

§ 418.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point

source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

8. Section 418.72 is revised to read as follows:

§ 418.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

PART 424—[AMENDED]

In Part 424:

1. The authority citation for part 424 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 424.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 424.16 is revised to read as follows:

§ 424.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 424.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 424.26 is revised to read as follows:

§ 424.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

6. Section 424.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 424.36 is revised to read as follows:

§ 424.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 424.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 424.52 is revised to read as follows:

§ 424.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (a) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

10. Section 424.62 is amended by revising the introductory text to read as follows:

§ 424.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 424.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 424.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent

limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 426 [AMENDED]

In part 426:

1. The authority citation for part 426 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), and 316(b) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314, 1316 (b) and (c), 1317(b); 86 Stat. 816 *et seq*., Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 426.16 is amended by removing and reserving paragraph (b) and adding introductory text to read as follows:

§ 426.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

* * * * *

3. Section 426.22 is revised to read as follows:

§ 426.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

4. Section 426.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

5. Section 426.26 is revised to read as follows:

§ 426.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

6. Section 426.32 is revised to read as follows:

§ 426.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

7. Section 426.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

8. Section 426.36 is revised to read as follows:

§ 426.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

9. Section 426.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

10. Section 426.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

11. Section 426.46 is revised to read as follows:

§ 426.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

12. Section 426.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 426.56 is revised to read as follows:

§ 426.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 426.62 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 426.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 426.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 426.66 is revised to read as follows:

§ 426.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 426.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 426.76 is revised to read as follows:

§ 426.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

19. Section 426.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

20. Section 426.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

21. Section 426.102 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

22. Section 426.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

23. Section 426.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). (The fluoride and lead limitations are applicable to the abrasive polishing and acid polishing waste water streams while the TSS, oil, and pH limitations are applicable to the entire process waste water stream):

* * * * *

24. Section 426.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal

and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

25. Section 426.122 is amended by revising the introductory text to read as follows:

§ 426.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

26. Section 426.126 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.126 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart. Because of the recognition that animal and vegetable oils can be adequately removed in a publicly owned treatment works, whereas mineral oil may not be readily removed and may pass through untreated, two separate limitations are established.

* * * * *

27. Section 426.132 is amended by revising the introductory text to read as follows:

§ 426.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

28. Section 426.136 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 426.136 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 427—[AMENDED]

In Part 427:

1. The authority citation for part 427 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 et seq., Pub. L. 92–500.

2. Section 427.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 427.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 427.16 is revised to read as follows:

§ 427.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 427.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 427.24 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 427.26 is revised to read as follows:

§ 427.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 427.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 427.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 427.36 is revised to read as follows:

§ 427.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 427.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 427.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 427.46 is revised to read as follows:

§ 427.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

14. Section 427.52 is revised to read as follows:

§ 427.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

15. Section 427.54 is amended by revising the text above the table the table remains unchanged to read as follows:

§ 427.54 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

16. Section 427.56 is revised to read as follows:

§ 427.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

17. Section 427.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

18. Section 427.64 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.64 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

19. Section 427.66 is revised to read as follows:

§ 427.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

20. Section 427.72 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall

achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 427.74 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.74 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

22. Section 427.76 is revised to read as follows:

§ 427.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

23. Section 427.82 is revised to read as follows:

§ 427.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

24. Section 427.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

25. Section 427.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

26. Section 427.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

27. Section 427.102 is revised to read as follows:

§ 427.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process wastewater pollutants to navigable waters.

28. Section 427.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

29. Section 427.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

30. Section 427.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 427.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart.

* * * * *

PART 428—[AMENDED]

In Part 428:

1. The authority citation for part 428 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), 307(c), Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 *et seq.*, Pub. L. 92–500.

2. Section 428.12 is amended by removing the introductory text and revising the text above the table (the

table remains unchanged) in paragraph (a) to read as follows:

§ 428.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 428.16 is revised to read as follows:

§ 428.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

4. Section 428.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 428.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 428.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 428.46 is revised to read as follows:

§ 428.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 428.52 is amended by revising the introductory text to read as follows:

§ 428.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 428.56 is amended by revising the introductory text as follows:

§ 428.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

10. Section 428.62 is amended by revising the introductory text to read as follows:

§ 428.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

11. Section 428.66 is amended by revising the introductory text as follows:

§ 428.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

12. Section 428.72 is amended by revising the introductory text to read as follows:

§ 428.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

13. Section 428.76 is amended by revising the introductory text as follows:

§ 428.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

14. Section 428.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable

control technology currently available (BPT):

* * * * *

15. Section 428.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart:

* * * * *

16. Section 428.92 is amended by revising the introductory text to read as follows:

§ 428.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

17. Section 428.96 is amended by revising the introductory text as follows:

§ 428.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

18. Section 428.102 is amended by revising the introductory text to read as follows:

§ 428.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

19. Section 428.106 is amended by revising the introductory text as follows:

§ 428.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403, in addition to the limitations set forth in paragraphs (a) and (b) of this section.

* * * * *

20. Section 428.112 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 428.116 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 428.116 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged to a publicly owned treatment works by a new point source subject to the provisions of this subpart:

* * * * *

PART 432—[AMENDED]

In Part 432:

1. The authority citation for part 432 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c), and 307(c) of the Federal Water Pollution Control Act, as amended; 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c); 86 Stat. 816 *et seq.*, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 432.12 is amended by revising the introductory text to read as follows:

§ 432.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 432.14 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.14 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

4. Section 432.16 is revised to read as follows:

§ 432.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

5. Section 432.22 is amended by revising the introductory text to read as follows:

§ 432.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 432.24 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 432.24 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

7. Section 432.26 is revised to read as follows:

§ 432.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

8. Section 432.32 is amended by revising the introductory text to read as follows:

§ 432.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 432.34 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.34 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

10. Section 432.36 is revised to read as follows:

§ 432.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403.

11. Section 432.42 is amended by revising the introductory text to read as follows:

§ 432.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

12. Section 432.44 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.44 Pretreatment standards for existing sources.

Any existing source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a point source subject to the provisions of this subpart.

* * * * *

13. Section 432.46 is revised to read as follows:

§ 432.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403

14. Section 432.52 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 432.56 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.56 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

16. Section 432.62 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

17. Section 432.66 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.66 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

18. Section 432.72 is amended by revising the text above the table (the

table remains unchanged) to read as follows:

§ 432.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

19. Section 432.76 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.76 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

20. Section 432.82 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.82 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

21. Section 432.86 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.86 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

22. Section 432.92 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.92 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

23. Section 432.96 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.96 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

24. Section 432.102 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) in paragraph (a) to read as follows:

§ 432.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

25. Section 432.106 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 432.106 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 435—[AMENDED]

In part 435:

1. The authority citation for part 435 continues to read as follows:

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

2. Section 435.32 is revised to read as follows:

§ 435.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of waste water pollutants into navigable waters from any source associated with production, field exploration, drilling, well completion, or well treatment (i.e., produced water, drilling muds, drill cuttings, and produced sand).

3. Section 435.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable

control technology currently available (BPT):

* * * * *

4. Section 435.52 is amended by removing the introductory text; redesignating paragraphs (a) introductory text, (a)(1) and (a)(2) as introductory text to the section, (a) and (b), respectively; and revising the newly designated introductory text to the section to read as follows:

§ 435.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 436—[AMENDED]

In part 436:

1. The authority citation for part 436 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 86 Stat. 816 *et seq.*, Pub. L. 92–500) (the Act).

2. Section 436.22 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 436.32 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 436.42 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraphs (b) and (c) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 436.52 is amended by revising the introductory text to read as follows:

§ 436.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 436.62 is amended by revising the introductory text to read as follows:

§ 436.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 436.72 is amended by revising the introductory text to read as follows:

§ 436.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

8. Section 436.102 is revised to read as follows:

§ 436.102 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing wet processes or flotation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

9. Section 436.112 is revised to read as follows:

§ 436.112 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing heavy media separation or flotation processes there shall be no discharge of process generated waste water pollutants into navigable waters.

10. Section 436.122 is amended by removing the introductory text and revising the text in paragraph (a) to read as follows:

§ 436.122 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

11. Section 436.132 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.132 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

12. Section 436.142 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.142 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

13. Section 436.152 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.152 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

14. Section 436.182 is amended by removing the introductory text and revising the introductory text in paragraph (a) to read as follows:

§ 436.182 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

15. Section 436.192 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.192 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section for operations mining anhydrite deposits, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process waste water pollutants into navigable waters.

* * * * *

16. Section 436.222 is revised to read as follows:

§ 436.222 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process generated waste water pollutants into navigable waters.

17. Section 436.232 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.232 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

18. Section 436.242 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.242 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

19. Section 436.252 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.252 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

20. Section 436.262 is amended by removing the introductory text and revising paragraph (a) to read as follows:

§ 436.262 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): there shall be no discharge of process generated waste water pollutants into navigable waters.

* * * * *

21. Section 436.322 is revised to read as follows:

§ 436.322 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): For operations not employing wet processes there shall be no discharge of process generated waste water pollutants into navigable waters.

22. Section 436.382 is amended by removing the introductory text and revising the text above the table (the table remains unchanged) in paragraph (a) to read as follows:

§ 436.382 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, and subject to the provisions of paragraph (b) of this section, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 443—[AMENDED]

In part 443:

1. The authority citation for part 443 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c), 1317(c), 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 443.12 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 443.16 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

4. Section 443.22 is revised to read as follows:

§ 443.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

5. Section 443.26 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

6. Section 443.32 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

7. Section 443.36 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of

pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

8. Section 443.42 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

9. Section 443.46 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 443.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

* * * * *

PART 446—[AMENDED]

In part 446:

1. The authority citation for part 446 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 446.12 is revised to read as follows:

§ 446.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

3. Section 446.16 is revised to read as follows:

§ 446.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart: There shall be no discharge of process water pollutants to a publicly owned treatment works.

PART 447—[AMENDED]

In part 447:

1. The authority citation for part 447 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306 (b) and (c) and 307(c), Federal Water Pollution Control Act, as amended (the Act); 33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316 (b) and (c) and 1317(c); 86 Stat. 816 *et seq.*; Pub. L. 92–500.

2. Section 447.12 is revised to read as follows:

§ 447.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants to navigable waters.

3. Section 447.16 is revised to read as follows:

§ 447.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart: There shall be no discharge of process water pollutants to a publicly owned treatment works.

PART 454—[AMENDED]

In part 454:

1. The authority citation for part 454 continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c); 86 Stat. 816 *et seq.*; Pub. L. 92–500) (the Act).

2. Section 454.12 is amended by revising the introductory text to read as follows:

§ 454.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 454.22 is amended by revising the introductory text to read as follows:

§ 454.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

4. Section 454.32 is amended by revising the introductory text to read as follows:

§ 454.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall

achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 454.42 is amended by revising the introductory text to read as follows:

§ 454.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

5. Section 454.52 is amended by revising the introductory text to read as follows:

§ 454.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

6. Section 454.62 is amended by revising the introductory text to read as follows:

§ 454.62 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 455—[AMENDED]

In Part 455:

1. The authority citation for part 455 continues to read as follows:

Authority: Secs. 301, 304, 306, 307, and 501, Pub. L. 92–500, 86 Stat. 816, Pub. L 95–217, 91 Stat. 156, and Pub. L. 100–4 (33 U.S.C. 1311, 1314, 1316, 1317, and 1361).

2. Section 455.22 is amended by revising the text above the table (the table remains unchanged) to read as follows:

§ 455.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of organic active ingredient:

* * * * *

3. Section 455.32 is revised to read as follows:

§ 455.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the manufacture of metallo-organic active ingredient: There shall be no discharge of process waste water pollutants to navigable waters.

4. Section 455.42 is revised to read as follows:

§ 455.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). The following limitations establish the quantity or quality of pollutants or pollutant properties controlled by this paragraph which may be discharged from the formulation and packaging of pesticides: There shall be no discharge of process waste water pollutants to navigable waters.

PART 457—[AMENDED]

In Part 457:

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

Authority:: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c), 86 Stat. 816 et seq.; Pub. L. 92–500)(the Act).

2. Section 457.12 is amended by revising the introductory text to read as follows:

§ 457.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

3. Section 457.32 is amended by revising the introductory text to read as follows:

§ 457.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

PART 458—[AMENDED]

In Part 458:

1. The authority citation for part 458 continues to read as follows:

Authority: Secs. 301, 304(b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b) and 1317 (b) and (c), 86 Stat. 816 *et seq.*; Pub. L. 92–500)(the Act).

2. Section 458.16 is revised to read as follows:

§ 458.16 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

3. Section 458.22 is revised to read as follows:

§ 458.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

4. Section 458.26 is revised to read as follows:

§ 458.26 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

5. Section 458.32 is revised to read as follows:

§ 458.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

6. Section 458.36 is revised to read as follows:

§ 458.36 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

7. Section 458.42 is revised to read as follows:

§ 458.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT): There shall be no discharge of process waste water pollutants into navigable waters.

8. Section 458.46 is revised to read as follows:

§ 458.46 Pretreatment standards for new sources.

Any new source subject to this subpart that introduces process wastewater pollutants into a publicly owned treatment works must comply with 40 CFR part 403. In addition, the following pretreatment standard establishes the quantity or quality of pollutants or pollutant properties controlled by this section which may be discharged to a publicly owned treatment works by a new source subject to the provisions of this subpart:

Pollutant or pollutant property-Oil and grease.

Pretreatment standard-100mg/liter.

PART 460—[AMENDED]

In Part 460:

1. The authority citation continues to read as follows:

Authority: Secs. 301, 304 (b) and (c), 306(b), 307 (b) and (c), Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, 1311, 1314 (b) and (c), 1316(b), and 1317 (b) and (c), 86 Stat. 816 *et seq.*; Pub. L. 92–500)(the Act).

2. Section 460.12 is amended by revising the introductory text to read as follows:

§ 460.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

Except as provided in §§ 125.30 through 125.32, any existing point source subject to this subpart, shall achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

* * * * *

[FR Doc. 95–15027 Filed 6–28–95; 8:45 am]

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Federal Register

Thursday
June 29, 1995

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910, et al.

Occupational Exposure to Asbestos; Corrections; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

RIN 1218–AB25

Occupational Exposure to Asbestos; Corrections

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

ACTION: Corrections to final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting and clarifying the preamble to, and correcting certain provisions of the final asbestos standards issued August 10, 1994 (59 FR 40964, 29 CFR 1910.1001, 1915.1001, and 1926.1101).

EFFECTIVE DATE: June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Liblong, Director of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1994 OSHA revised its final asbestos standards in general industry and construction and issued a new shipyard employment standard. Subsequently, technical and typographical errors were discovered in both the preamble and regulatory text. Additionally, members of the regulated public have asked OSHA to clarify, correct, or reconsider certain regulatory provisions.

To address these problems, OSHA has made a number of corrections to both the standard and the preamble. The corrections to the standards include (1) correction of typographical errors; (2) corrections that clarify the agency's intent but do not change the substantive requirements imposed by the standard; and (3) corrections intended to better effectuate the agency's intent when it issued the standard. All these corrections to the standard are deemed to be ''minor'' amendments within the meaning of 29 CFR 1911.5. Because the corrections are based on the existing rulemaking record and are not intended to affect the protection afforded by the standard in a significant way, OSHA finds good cause, pursuant to 29 CFR 1911.5 and the Administrative Procedure Act, for promulgating the corrections without notice and opportunity for public comment.

The discussion which follows is organized by subject matter, not by paragraph number alone. As in the preamble to the revised standards, each of the standards, general industry, construction, and shipyards, contain overlapping, comparable, and in some cases identical provisions covering various subject headings. However, the general industry standard's paragraph designations differ. In this preamble OSHA is separately discussing, topic by topic, all clarifications which are in the nature of preamble changes, as well as corrections and technical amendments concerning that topic. This way, the reader can be apprised of all changes and clarifications on a particular topic at one time. OSHA is not including in these discussions those corrections to the text which are typographical in nature and which are self-explanatory.

1. Definitions

Paragraph (b) Construction and Shipyards Employment Standards.

OSHA is amending its definition of ''disturbance'' in order to clarify it to reflect the Agency's original intent. OSHA has found its unamended definition confusing to the regulated community. This will eliminate some terminology, such as use of the word ''contact'' to describe both Class III and IV operations. Thus, disturbance becomes the operational term to distinguish a Class III operation; while ''contact'' (without ''disturbance'') distinguishes Class IV. (See also the discussion clarifying Class IV operations in this document.) The first sentence of the definition now clearly specifies that a disturbance entails ''activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generates visible debris from ACM or PACM.'' OSHA also clarifies that work involving dust that is accompanied by debris in the presence of asbestos containing material, must be treated as an asbestos job. OSHA does not believe that this clarification substantively alters the requirements or the intended worker protection of its job classification scheme. Thus, mere ''contact'' with asbestos is clearly not a Class III activity. The inclusion of the phrase ''disrupt the matrix'' in the definition allows inclusion of other, undefined operations which might also result in release of fibers from the material in which they are embedded.

OSHA is correcting the General Industry Standard to include certain definitions inadvertently omitted from the August 10, 1994 publication of the final rule. These include definitions for the following terms: Certified Industrial Hygienist, homogeneous area, presumed asbestos containing material, surfacing material, surfacing ACM, thermal system insulation and thermal system insulation ACM. The added definitions are consistent with those in the Construction and Shipyard Employment Standards.

Class IV Work: OSHA has made minor clarifications to the definition of Class IV as it applies in the construction and shipyard employment standards. They more fully realize OSHA's intent in creating this class of work, distinguish it from housekeeping under the general industry standard, and expressly limit its scope to accepted ''construction'' activities. The definition now reads: ''Class IV asbestos work means maintenance and custodial construction activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II and III activities.'' Because work under the construction standard must be related to and on the worksite of a construction job, the definition now specifies that Class IV work which is ''clean-up'' must result from Class I, II and III work. In addition, to distinguish Class IV from Class III work, the definition now states that maintenance activities are Class IV only if employees ''contact, but do not disturb'' ACM or PACM. It should be noted that housekeeping activities in the general industry standard in some cases might include clean-up of asbestos containing materials, however in the absence of a construction job or site, this clean-up is not a construction activity. OSHA notes however, that use of wet methods, HEPA vacuums and immediate clean-up are required for these activities in all cases. The Agency believes that these changes will allow employers and employees to more easily distinguish Class IV from Class III activities. The Agency is confident that these changes will not weaken employee protection. In fact, by clarifying which activities must be treated as Class IV, OSHA believes enforcement will be facilitated, and the level of compliance will rise.

2. Regulated Areas

Several questions have arisen among participants about the need for regulated areas when Class II or III work is performed for which a negative exposure assessment is produced. OSHA continues to believe that it is necessary to assure that by-standers are protected from unwittingly entering areas where the carcinogen asbestos is being disturbed. OSHA wishes to clarify, however, that when the employer can show that which work is performed by properly trained and informed workers in areas to which no other workers have access, OSHA does

not believe that demarcation of the area is necessary and therefore, is not required.

3. Exposure Assessments and Monitoring

Paragraph (f) Construction and Shipyard Employment Standards.

In response to the concerns of participants, OSHA is clarifying, but not further amending (f)(2)(iii). Some parties have expressed the view that the distinction between the use of historical data and objective data needs additional clarification. In the 1994 final rule, the definition of objective data was changed from that of the 1986 standard to include activities, as well as products, for which a demonstration is made that operations involving the products and/or activities will not result in fiber levels in excess of the PELs. For example, in a facility such as a refinery, gasket removal is a frequent operation due to the large number of pipe joints. If the employer has monitored these jobs in the past and has collected sufficient data to conclude that this activity will not result in fiber levels in excess of the PELs even when improper work practices and lesser trained personnel are used, it may be concluded that the objective data criteria have been met, in which case, further monitoring is not required.

These data must include situations performed under those work conditions having the greatest potential for releasing asbestos fibers, such as in the example above, where the gasket is difficult to remove fully or where the crew is inexperienced. OSHA believes that ''objective data'' determinations require basic statistical analysis. At the least, the prior data depended on cannot be the result of chance. Data reflecting the results of many jobs and/or employees are likely to provide adequate data on which to base ''objective data'' determinations. Certainly, when many different employer's employees have performed a particular task, and levels consistently fall below the PEL, it is likely that future jobs will also fall below the PEL.

In requiring objective data determinations to include the worst-case situation, OSHA does not intend to render this an impossible requirement to meet. Rather, as described earlier, the monitoring results from the situations which the employer has encountered in the activity must be included in the information used by the competent person in evaluation of the job. Therefore, using the earlier example, even if a gasket removal was performed in the past using improper work practices which resulted in elevated fiber levels, and the current job is to be performed correctly in compliance with the standard, this job can still meet the objective data criteria if additional data clearly supports its low exposure potential. The employer is not expected to contrive unlikely scenarios, monitor them and conclude that an objective data exemption cannot be claimed. The judgment of a trained, experienced competent person is essential to making this determination. OSHA anticipates wider use of this exemption in situations where it is warranted.

The extent to which objective data documents the effectiveness of controls will vary depending upon the potential for fiber release. A job with very low exposures, for examples, less than 0.01 f/cc, with simple work practices and little potential for control failure, will need minimal data. However, due to the high potential for fiber release from thermal system insulation and surfacing ACM, OSHA has found that the objective data exemption from monitoring of Class I operations may not be relied on, regardless of the control method used (59 FR p. 40983). For example, in the case of glovebag removals of Class I materials, only historic data may be used in the exposure assessment by the competent person. OSHA continues to believe that annual monitoring is needed to assure the continued effectiveness of control of fiber levels in jobs involving removal of significant amounts of thermal system ACM and surfacing ACM.

OSHA has not specified the number of personal monitoring data points required to make these determinations. Rather, it relies on the training and experience of the competent person to use good judgment in assessing each operation to determine the ability of the data to predict potential exposure of workers in that specific job.

4. Methods of Compliance

Paragraph (g) Construction and Shipyard Employment standards.

OSHA is clarifying the language in paragraph (g)(4)(ii) to reflect the Agency's intention that outdoor Class I work performed in areas where no employees are working in the adjacent area a need not utilize critical barriers, nor is perimeter monitoring required during such work when control methods in (g)(5) are properly used. Several participants submitted data indicating low levels of fibers were measured during outdoor activities (e.g., Ex.7–39 and Ex. 127).

OSHA is clarifying paragraph (g)(5)(ii) of the construction and shipyards standards to explain when glovebag use is allowed. OSHA allowed glovebags to be used in Class I operations or removal of TSI from ''straight runs of piping''. OSHA was concerned that the seal of the bags would be stressed if bags were used to remove TSI from structures whose configurations made attachment difficult and unreliable. Therefore, the provision limited glove bag use to ''straight runs'' of piping, clearly a configuration which bags were manufactured to fit. The Agency did not intend that glove bags could not be used to remove TSI from connecting members, joints, elbows and valves which connect and attach to asbestos-covered pipes, if they too, are manufactured and designed to be used for that purpose. These corrections change the regulatory text in paragraph (g)(5)(ii) of the construction and shipyard standards to add that glovebags may be used on connecting configurations so long as they are designed for that purpose, used as designed, and not modified.

In response to concerns expressed by participants, OSHA wishes to clarify (g)(6)(iii) in which a licensed engineer or certified industrial hygienist is required to consider worst-case conditions in determining the adequacy of a alternate method to control asbestos exposure in Class I operations. ''Worst-case conditions'' do not include every imaginable scenario, but the worst case is one which can reasonably be expected to be encountered in use of the method. For example, in the case of a power failure, would the control method remain capable of containing the fibers and continue to control exposure? What would be expected if all workers using the method were newly trained? These considerations should include circumstances reasonably expected to occur. The certifying hygienist or engineer is not required to make the determination with absolute and unreasonable certainty. OSHA intends that allowing the use of alternate effective control methods will promote the development of new technologies.

Roofing: After the standard was issued, the National Roofing Contractors Association (NRCA) filed a petition with OSHA asking that a number of provisions of the standard be reconsidered or clarified insofar as they applied to roofing operations. Upon examining NRCA's petition in light of the rulemaking record, OSHA has determined that certain corrections and clarifications to the standard would ease compliance burdens on roofing contractors and avoid creating safety hazards without significantly increasing the amount of asbestos to which roofing workers are exposed. OSHA also

determined that certain corrections and interpretations were needed to clarify the agency's original intent as to the meaning of the standard. OSHA also believes that the meritorious recommendations of the petition are properly responded to by the following corrections and clarifications.

(a) Removal of intact cements, coatings, mastics, and flashings.

The original standard classified all removals of asbestos-containing material from roofs as Class II operations. This classification was based on OSHA's evaluation of the risk associated with removal from roofs of asbestos-containing built-up roofing and removal of asbestos-cement (A/C) shingles. Such jobs were assigned the Class II designation because the large quantity of asbestos-containing material on such roofs dictated that care had to be taken to assure that substantial numbers of asbestos fibers were not released by the removal techniques used or by the manner in which the material was handled after removal.

On many roofs, the shingles or built-up roofing do not contain asbestos but asbestos is present in the form of cements, mastics, coatings, and flashings. These products are not the primary roofing material but are typically used for purposes such as weatherproofing openings or edges. For example, on a flat roof with a parapet around the edge, flashing would be used to seal the area where the built-up roofing meets the parapet. When the only ACM on a roof is in the form of cements, mastics, coatings, and flashings, the amount of asbestos present is much less than when the main roofing material contains asbestos, and the potential for worker exposure is correspondingly lower. There is still the potential for significant fiber release if such materials have deteriorated to the point where they are no longer ''intact,'' i.e., where either before or during removal they crumble, are pulverized, or otherwise become deteriorated to the point where the asbestos fibers are no longer likely to be bound with their matrix. However, such materials lose their waterproofing ability, and are therefore usually replaced, before they have deteriorated to the point where they are non-intact. Thus, in the usual circumstances when such materials are intact both before and during removal, the potential for exposure is low and the full range of precautions required during Class II work is not needed to protect workers against excessive asbestos exposure.

Accordingly, OSHA is correcting the standard to provide that removal of intact cements, mastics, coatings, and flashings is not Class II work. A new paragraph (g)(11) is being added to the construction standard that will exclusively govern such removals and is intended to impose only a few straightforward requirements and prohibitions that reflect the limited asbestos exposure potential of such operations. An identical paragraph (g)(12) is being added to the shipyard employment standard. Under paragraph (g)(11), the material must not be sanded, abraded, or ground but must be removed using manual methods that do not render the material non-intact. Material that has been removed from a roof must not be dropped or thrown to the ground and must be removed from the roof by the end of the work shift, either by being carried or passed to the ground by hand or by being lowered to the ground via covered, dust-tight chute, crane or hoist. Prior to the start of the job, the material must be examined by a competent person to determine whether it is intact and is likely to remain intact throughout the job. And the employees must be trained in the hazards of asbestos exposure and the proper work practices and prohibitions applicable to such work. If these conditions are not met, then the job must be treated as a Class II job.

When cements, mastics, coatings, and flashings are manufactured and installed, the asbestos fibers are tightly encapsulated by adhesive bituminous and resinous compounds that effectively prevent the fibers from being released. In order to provide effective waterproofing, these materials must retain their adhesive quality over their useful life. Accordingly, when such materials are intact prior to removal, the use of commonly used manual methods to remove the material will not result in significant fiber release. A variety of hand tools are typically used to remove cements, mastics, coatings, and flashings, including spud, spade, flat-blade or slicing tools, such as axes, mattocks, pry bars, spud bars, crow bars, shovels, flat-blade knives, and utility knives. When these tools are used to slice, cut, strip-off, shear-under, or pry-up the material, in accordance with standard practice in the roofing industry, their use is acceptable under new paragraph (g)(11). If these tools are used in other, unconventional ways which cause the material to crumble or become pulverized, or if other tools or methods which render the material non-intact are employed, then new paragraph (g)(11) does not apply.

Employees working on jobs covered by new paragraph (g)(11) and no other jobs that are covered by the asbestos standard are not subject to the special training requirements for Class II, III or IV work specified in paragraph (k)(9)(iii)–(v). Workers on jobs covered by new paragraph (g)(11) must, however, be trained in the following topics:

- Identification and Recognition of Asbestos-Containing Roofing Materials
  - identification of asbestos
  - Uses in roofing, past and present
  - Characteristics of asbestos
- Potential Health Effects of Asbestos
  - Nature of asbestos related disease, including latency and medical tests for identifying asbestos diseases
  - Routes of exposure
  - Dose response relationships
  - Relationship between cigarette smoking and asbestos exposure and availability of smoking cessation programs
- Federal OSHA Construction Asbestos Standard
  - Overview of standard
  - Discussion of alternative methods for handling intact asbestos roof coatings, mastics, cements, and flashings
  - Discussion of PEL and significant risk
- Intact versus Non Intact Materials
  - Definitions
  - How to recognize non intact materials
  - Procedures to be followed when material is found or becomes non intact
- Appropriate Work Practices
  - Applying mastics, cements, coatings
  - Manual methods for removing materials
  - Clean up and waste disposal

The competent persons who inspect jobs covered by new paragraph (g)(11), and who do not supervise other jobs that are covered by the asbestos standard, are not subject to the special training requirements for Class II, III or IV work specified in paragraph (o)(4). Such competent persons must, however, be knowledgeable in the following topics in addition to the above topics covered in worker training:

- Methods of Determining Presence of Asbestos-Containing Roofing Material
- Understanding and Interpreting Air Monitoring Data
  - Some states, building owners, etc. require air monitoring on all ACM projects
  - Understanding a negative exposure assessment
- Notification Requirements—Commercial/Industrial Work Only

In addition to exclusively regulating the removal of intact cements, mastics, coatings, and flashings, paragraph (g)(11) also exclusively regulates the installation of ACM on roofs. Because the use of most asbestos products has been phased out, the only asbestos-containing products currently being installed on roofs are certain cements, mastics, and coatings. These materials are installed in a liquid or semi-liquid state in which the asbestos fibers are encapsulated in the bituminous or

resinous binders used in these products, and new paragraph (g)(11) therefore does not require special work practices to prevent fiber release during installation. In addition to the requirements that apply to removal, paragraph (g)(11) contains a notification requirement applicable to newly-installed products. When materials labeled as containing asbestos pursuant to paragraph (k)(8) of the standard are installed on non-residential roofs, the contractor must notify the building owner of the presence and location of the asbestos-containing material. Under the standard, building owners must be aware of the presence of ACM, and this notification requirement will give the building owner the information needed to fulfill the owner's compliance duty. The requirement is limited to installation of ACM on non-residential roofs because owners of residential dwellings are typically not employers subject to the standard and are therefore not required to maintain records about the presence of asbestos in their buildings.

Because work on jobs covered by new paragraph (g)(11) is not Class I, Class II, or Class III work, such work is not included under paragraph 1101(m)(1)(i) in the determination of which employees are covered by the medical surveillance provisions of the standard unless during such jobs employees are exposed at or above the TWA or excursion limit or wear negative pressure respirators. In addition, the installation or removal of intact asbestos-containing roof coatings, mastics, cements and flashings are not subject to any provision of the standard other than new paragraph (g)(11) as long as the materials remain intact and the requirements of paragraph (g)(11) are satisfied.

OSHA notes that materials very similar to these ''incidental'' roofing materials are used for other purposes; for example, asbestos impregnated asphaltic wrap is used for protection of underground pipes. OSHA regards removal of such intact materials as being governed by (g)(11) of the construction standard [(g)(12) of the shipyard employment standard.]

The corrections, clarifications and interpretations that are discussed in the following sections apply to roofing operations in which asbestos is present in the primary roofing material, as in the case of built-up roofing (BUR) and A/C shingle roofs.

(b) *Use of Wet Methods and Respirators During Roof Removals*

The standard recognizes that wet methods are an important means of control during asbestos removal operations. When the surface of material being removed is wet, some asbestos fibers that would otherwise be released when the material is disturbed will adhere to the liquid rather than become airborne. Therefore, paragraph (g)(1)(ii) generally requires that wet methods be used to control worker exposure to asbestos during removal, as well as other, operations. However, paragraph (g)(1)(ii) recognizes that wet methods are sometimes infeasible and provides that wet methods need not be used in such circumstances. One situation in which paragraph (g)(1)(ii) indicates that wet methods may be infeasible is when they would create slipping hazards during roofing work.

This reference to slipping hazards in roofing work was included in the standard because a number of commenters expressed concern that an unconditional requirement to use wet methods could increase safety hazards associated with roofing work. (See 59 FR at 41006). Wetting the surface of a roof can make the surface slippery and increase the likelihood that a worker could slip while walking or working on the roof. This would be particularly dangerous on sloped roofs, where a slip could result in a worker falling off the edge of the roof. OSHA recognizes that the potential for falling from a roof makes roofing work hazardous even under the best of circumstances, and use of wet methods that make the roof surface slippery can add significantly to that hazard.

OSHA believes that the potential for increased safety hazards when wet methods are used on sloped roofs dictates that wet methods should not be used on sloped roofs unless there is a realistic likelihood that the TWA or excursion limit would be exceeded if wet methods are not used. Data in the rulemaking record indicate that exceedances of the TWA or excursion limit will not occur when the material being removed is intact and the work practices specified in the standard are followed. (See 59 FR at 41005). Accordingly, the standard is being amended to provide that wet methods are not required on sloped roofs when the ACM being removed is intact.

Two corrections to the standard are being made to effectuate this intent. Paragraph (g)(1)(ii) is being corrected to state that wet methods need not be used during roofing work when they are not required under paragraph (g)(8)(ii). And paragraph (g)(8)(ii)(B) is being corrected to provide that wet methods must be used to remove roofing materials that are not intact or that will be rendered not intact during removal unless wet methods are not feasible or will create safety hazards. As amended, paragraph (g)(1)(ii) makes clear that roofing materials are only subject to requirements for wet methods that are explicitly contained in paragraph (g)(8)(ii). There are two such requirements. First, paragraph (g)(8)(ii)(B), as amended by this notice, retains the requirement for use of wet methods to remove non-intact material unless the competent person determines that wetting the material is not feasible or would create a safety hazard. Second, paragraph (g)(8)(ii)(C) requires that cutting machines be continuously misted during use unless a competent person determines that misting substantially decreases worker safety. As cutting machines are only used in the removal of built-up roofing, which is not found on sloped roofs, the standard does not require the use of wet methods on sloped roofs when the material being removed is intact.

When wet methods are not used, the increased potential for airborne asbestos may dictate the need for other precautions, such as respirator use. Paragraph (h)(1)(iii), as originally written, required use of respirators during all Class II and Class III work that was not performed using wet methods, without regard to actual or anticipated exposure levels. However, respirator use can also increase the safety hazards associated with roofing work by limiting workers' visibility and mobility. Moreover, roofing work is sometimes done in hot weather, which can add to the discomfort associated with respirator use. Respirator use may also increase the risk that roofing workers performing the often physically demanding labor required of them during hot weather will suffer heat stress. OSHA believes that the drawbacks of respirator use on roofs would lead many roofing contractors to use wet methods rather than respirators on sloped roofs if one or the other is required. Therefore, a requirement that either respirators or wet methods be used would lead to increased use of wet methods on sloped roofs, with an attendant increase in slipping and falling hazards.

OSHA is reluctant to include a requirement in the standard that could increase safety hazards during roofing work unless such a requirement is clearly needed to avoid overexposing workers to airborne asbestos. As noted above, evidence in the rulemaking record indicates that asbestos levels will not exceed the TWA or excursion limit when intact roofing material is removed using proper work practices even when wet methods are not used. For the reasons discussed earlier, OSHA has

therefore concluded that wet methods should not be required during such removals. OSHA further concludes that employers should not be forced to choose between wet methods and respirators because such a choice would undoubtedly lead to use of wet methods in many cases and, even where respirators are selected, roofing workers would be exposed to increased safety hazards. Accordingly, paragraph (h)(1)(iii) is being corrected to provide that even when wet methods are not used on sloped roofs, respirators need not be worn when a negative exposure assessment has been made and the ACM is removed in an intact state.

(c) Lowering Removed Material to the Ground

Once asbestos-containing roofing material has been separated from the roof, it must be lowered to the ground for disposal. Proper handling of the material, both on the roof and on the ground, is needed to reduce the release of asbestos fibers. Even when the material is intact, the large quantity of material that must be moved from the roof to the ground during a Class II roof removal job dictates that care be used in the disposal operation. And when material is non-intact, the potential for release of large numbers of asbestos fibers during disposal operations requires additional precautions.

As originally written, paragraph (g)(8)(ii)(E) required that any ACM removed from a roof either be immediately lowered to the ground via covered, dust-tight chute, crane or hoist, or else be placed in an impermeable waste bag or wrapped in plastic sheeting and lowered to the ground no later than the end of the work shift. By oversight, no distinction was made between intact and non-intact material. To correct this oversight, OSHA is clarifying the wrapping or bagging requirement of paragraph (g)(8)(ii)(E) in the case of intact roofing material. As long as the material is lowered to the ground no later than the end of the work shift, the employer is no longer required to wrap or bag intact material while the material remains on the roof. Wrapping or bagging of intact material is inappropriate for two reasons. First, wrapping or bagging requires additional handling of the material and could increase the likelihood of asbestos fiber release, particularly in the case of large sections of built-up roofing, which can be difficult to wrap or bag. Second, wrapping or bagging increases the time required for the job and would thereby increase the time during which workers are exposed to the safety hazards associated with roofing work. OSHA believes that, when ACM that has been removed from a roof is intact, there is little potential for fiber release if the material remains undisturbed on the roof for a short time.

For non-intact material, however, the potential for significant fiber release requires some means of protection if the material is not immediately lowered to the ground. To minimize fiber release from non-intact material while it remains on the roof, paragraph (g)(8)(ii)(E) requires that such material either be kept wet, wrapped, or bagged if the material is not immediately lowered to the ground. The option to keep the material wet was not available under the original version of the standard. However, keeping the material wet will minimize fiber release and will avoid the need the additional handling required when the material is wrapped or bagged. Although wetting may sometimes not be feasible, there is no reason not to allow its use as an alternative to wrapping or bagging in those situations where it is feasible.

As corrected, paragraph (g)(8)(ii)(E) allows material to be carried or passed to the ground by hand as an alternative to being lowered by means of a dust-tight chute, crane or hoist. This gives employers additional flexibility in situations where manual lowering is feasible. For example, some roofing jobs may involve removal of amounts of ACM sufficiently small that the most feasible method of lowering the material to the ground may be to have it carried off the roof by a worker. Also, where the roof is not too high off the ground, it may be feasible to pass the material to the ground from hand to hand. As long as the material is not dropped or thrown to the ground, OSHA does not wish to prohibit use of lowering methods that do not give rise to the potential for significant fiber release.

Two technical amendments dealing with disposal of asbestos-containing roofing material are also being made. Paragraph (l)(2), the general provision for disposing of asbestos waste, is being corrected to state explicitly that the specific requirements for disposal of roofing waste in paragraph (g)(8)(ii) apply in lieu of the general requirement of paragraph (l)(2). And paragraph (g)(1)(iii), which generally requires prompt clean-up and disposal of asbestos waste and debris in leak-tight containers, is similarly being corrected to state that the specific provisions for clean-up and disposal of roofing waste in paragraph (g)(8)(ii) are exclusive. Thus, disposal of roofing waste is governed exclusively by paragraph (g)(8)(ii)(E), which has been discussed above, and paragraph (g)(8)(ii)(F), which requires that once roofing material has been lowered to the ground, unwrapped material shall be transferred to a closed receptacle in a manner that will preclude the dispersion of dust.

(d) Cleanup of Dust and Debris

The standard contains several requirements aimed at assuring that asbestos-containing dust and debris are cleaned up in a manner that minimizes worker exposure. Paragraph (g)(1)(i) requires that HEPA vacuums be used to collect all dust and debris containing ACM or PACM. The general provision for use of wet methods in paragraph (g)(1)(ii) applies during cleanup operations. And dry sweeping, shoveling, or other dry clean-up methods are prohibited by paragraph (g)(3)(iii).

When a roof is to be removed, there is often dust and debris on the roof that has resulted from the roof's exposure to the elements over a long period of time. The standard does not require HEPA vacuuming of such general environmental contamination before roof removal work begins or during such work. HEPA vacuuming of dust and debris is only required if there is an indication that non-intact ACM is the source of the dust and debris. Similarly, if a roofing contractor does clean up environmental dust and debris that is not associated with non-intact ACM before or during a roof removal job, the standard's prohibition on use of dry clean-up methods does not apply.

When a power roof cutter is used to remove built-up roofing, the dust resulting from the cut is non-intact ACM, and the standard requires that the dust be thoroughly and appropriately cleaned up. Rather than requiring that such dust always be HEPA vacuumed, paragraph (g)(8)(ii)(D) is being corrected to give employers additional flexibility when the dust can be removed by other means that prevent it from becoming airborne. When built-up roofing is removed from a smooth-surface roof (i.e., a non-aggregate built-up roof), paragraph (g)(8)(ii)(D) now permits employers, as an alternative to HEPA vacuuming, to gently sweep and then carefully and thoroughly wipe up the still-wet dust and debris generated by the roof cutter and left along the cut line. As long as the dust is completely wiped up while it is wet, this method will assure that the dust is disposed of without becoming airborne. However, where the built-up roofing has an aggregate surface, sweeping and wiping of the dust generated by the roof cutter is not an effective alternative because some dust will remain in the cracks and crevasses of the aggregate surface.

Therefore, HEPA vacuuming is still required in this situation.

A correcting amendment is being made to paragraph (g)(1)(i), the general provision requiring HEPA vacuuming of dust and debris, to acknowledge that paragraph (g)(8)(ii)(D) contains an exception to the requirement for HEPA vacuuming of dust and debris in the case of removal of built-up roofs from smooth bases. The amendment to paragraph (g)(1)(i) does not affect the general requirement that dust and debris associated with non-intact roofing material be HEPA vacuumed.

(e) Small Removal and Repair Jobs

Before a roof has reached the end of its useful life and must be replaced, it can develop leaks that must be repaired. When only a small area of an asbestos-containing roof is disturbed during a removal or repair job, the potential for exposure is much lower than for a complete roof removal job, and all of the precautions required for Class II or III roof removal jobs are not needed. It would, for example, be unnecessarily burdensome to require a HEPA vacuum to be lifted to a roof and connected to a possibly distant source of electricity if only a negligible amount of dust must be collected. Accordingly, a new paragraph (g)(8)(ii)(H) is being promulgated to provide that removal or repair of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used and no visible dust is created. By requiring that hand methods be used and no visible dust be released, the exception is limited to situations where the work is done in a manner that does not release significant numbers of asbestos fibers. Moreover, OSHA believes that the 25 square foot figure, which represents a 5-foot square area, represents a reasonable cutoff between small repair jobs that do not require the full range of protection and larger jobs that present the potential for significant exposures.

Paragraph (g)(8)(ii)(H) is located in a section of the standard that addresses methods of compliance for Class II work. However, a job that qualifies for the exception also does not require use of wet methods and HEPA vacuuming under provisions of the standard applicable to Class III and Class IV roofing operations.

(f) Clarifying Corrections

Several corrections are being made to the regulatory language to clarify OSHA's intent and avoid uncertainty among employers who must comply with the standard.

Paragraph (f)(2)(ii), which describes the basis for making initial exposure assessments, is being corrected to state more directly that the initial exposure assessment must be based on jobsite monitoring unless a negative exposure assessment has been made.

The introductory sentence of paragraph (g)(8)(iii) is being corrected to clarify OSHA's intent that the requirements of paragraph (g)(8)(iii) do not apply to removal of ACM from roofs but only to removal of ACM from building exteriors other than roofs.

Paragraph (k)(7)(ii) is being corrected to assure that signs demarcating a regulated area provide accurate information as to whether respirators and protective clothing are required in the area. As originally written, the provision required all such signs to state that respirators and protective clothing must be worn in the regulated area. However, this information was sometimes inaccurate, because certain work must be performed in regulated areas even when the employees in the area are not required to wear respirators and protective clothing. For example, all Class II work must be performed in regulated areas, but respirators and/or protective clothing are not required during such work if the material remains substantially intact during removal and a negative exposure assessment has been made. Accordingly, paragraph (k)(7)(ii) is being corrected to provide that signs marking regulated areas must state that respirators and protective clothing must be worn within the area only when the standard in fact requires such protection.

(g) Clarifying Interpretations

Definition of ''intact'': The term ''intact'' is used in a number of provisions of the standard relating to roofing work. For example, several paragraphs discussed above differentiate between ''intact'' and ''non-intact'' roofing materials. Similarly, paragraph (g)(8)(ii)(A), which applies to Class II roofing removals, requires that roofing material be removed in an ''intact'' state to the extent feasible. ''Intact'' is defined at paragraph (b) to mean ''that the ACM has not crumbled, been pulverized, or otherwise deteriorated so that it is no longer likely to be bound with its matrix.'' Accordingly, paragraph (g)(8)(ii)(A) is satisfied when the roofing material is removed in a manner that does not cause it to crumble, become pulverized, or otherwise damaged in a manner that is likely to release asbestos fibers. Also, if asbestos-containing roofing material is not removed ''in a substantially intact state,'' paragraph (h)(1)(ii) requires respirator use. In short, the meaning of the term ''intact'' has considerable importance in determining whether and how roofing operations are regulated under the standard.

Roofing materials that are separated into pieces in the process of removal or repair are not considered to be ''non-intact'' solely because the material has been cut, sliced, pried, or otherwise separated into smaller units for the purpose of removal. The condition of the smaller units or pieces of removed roofing (for example, a 2 foot by 2 foot section of built-up roofing) must be evaluated against the definition of the term ''intact'' in paragraph (b) of the standard in order to determine whether the roofing material has been rendered ''non-intact'' by a removal or repair operation. For example:

a. Built-up roofing (BUR) that has been cut into smaller sections (e.g., using a power roof cutter) and pried up from the roof is not deemed to be ''non-intact'' solely because it has been separated into pieces. If the pieces of removed BUR have ''not crumbled, been pulverized, or otherwise deteriorated so that [they] are no longer likely to be bound with [their] matrix,'' then they are ''intact'' as defined in paragraph (b) of the standard. On the other hand, the dust created by the destructive force of the cutting blade of a power roof cutter would be considered ''non-intact.''

b. The same interpretation applies to other roofing materials which are typically removed by dividing them into smaller units. For example, roof mastics and cements are usually pried, chipped or scraped off; asphalt felt underlayments are sliced and rolled-up or sometimes scraped-off or chipped-off; and flashings are sliced into manageable units and then pried-up. The fact that roofing materials have been removed in this fashion does not by itself render them non-intact under the standard. Rather, the removed pieces of roofing must be evaluated to determine whether they are ''intact'' as defined in paragraph 1101(b) of the standard.

c. Likewise, although asbestos-cement (A/C) shingles are pried up by hand and removed as individual units of roofing, occasionally incidental breakage of the shingles will occur even during careful removal procedures. Such incidental breaking does not in and of itself render the material non-intact under the standard; the question is whether the shingles (whether broken or not) have been crumbled, pulverized, or otherwise are not likely to be bound with their cementitious matrix as a result of the removal operation. The same interpretation applies to incidental breakage of other asbestos-containing roofing materials during removal or subsequent handling.

Paragraph (h)(1)(ii) requires that respirators be used if the material is not removed in a ''substantially intact state.'' This provision does not require

that respirators be used during removal of built-up roofing when the BUR is cut into pieces.

HEPA Vacuuming, Wet Methods, and Bagging or Wrapping of Removed Material: Certain of the corrections to the standard that have been described earlier limit the situations in which HEPA vacuuming, wet methods, and bagging or wrapping are needed when asbestos-containing roofing materials are ''intact'' both prior to and after removal. Because many roof removal jobs involve removal of intact material, it is useful to summarize when these precautions are required.

The only wet method required when removing intact roofing material is continuous misting of the cutting blade of a power roof cutter, unless the competent person determines that misting substantially reduces worker safety, during removal of built-up roofing. HEPA vacuuming is only required to remove the dust that the power roof cutter leaves behind on aggregate-surface built-up roofs. And intact material does not need to be bagged or wrapped while it remains on the roof prior to being lowered to the ground. The material must, however, be lowered to the ground before the end of the work shift.

OSHA emphasizes that additional precautions are required when roofing material is non-intact. All dust and debris associated with such material must be HEPA vacuumed. If non-intact material is not immediately lowered to the ground, it must be kept wet, bagged, or wrapped while it remains on the roof. Additional use of wet methods will often be appropriate. However, because of potential safety hazards and other problems that excessive water on a roof can create, the degree to which wet methods are used is left to the sound judgment of the competent person. When non-intact material is removed, and particularly when wet methods are not used or when their use is limited, precautions such as respirators and protective clothing, which must be used if a negative exposure assessment cannot be made, will be required.

Isolation or Shutdown of Air Intakes: Paragraph (g)(8)(ii)(G) requires that roof level heating and ventilation air intake sources be isolated, or the ventilation system shut down, during Class II roof removal work. The purpose of this provision is to prevent asbestos fibers from entering the building's ventilation system and being inhaled by persons in the building.

In general, paragraph (g)(8)(ii)(G) requires isolation or shutdown only of air intakes in the regulated area. Under paragraph (e), regulated areas must be established and demarcated in a manner that will protect persons outside the area from exposure to asbestos. Therefore, when regulated areas have been properly established, there should not be a significant quantity of airborne asbestos fibers available to enter air intakes outside the regulated area. In some circumstances, however, prudence will dictate that air intakes even outside the regulated area be isolated or shut down. For example, if the opening of an intake outside the regulated is downwind from the removal work, variables such as wind speed and proximity and orientation of the intakes to the air flow may warrant isolation or closure of the intake. OSHA expects the competent person to use good judgment to effectuate the intent of the provision. Forms of isolation that will satisfy paragraph (g)(8)(ii)(G), depending on the circumstances of the particular job, include: (1) the use of 20 foot ''buffer zones,'' subject to the exercise of good judgment by the competent person based on site-specific conditions, as discussed in the August 10, 1994 preamble, 59 Fed. Reg. at 41006; (2) the use of HEPA filters over the air intakes; (3) the use of horizontal or vertical extensions that relocate the opening of the air intake outside or above the regulated area or away from or above a nearby upwind source of asbestos fiber emissions; or (4) covering the intake with plastic sheeting or another kind of barrier.

5. Respiratory Protection

Paragraph (h) of Construction and Shipyard Employment Standards.

Respirators: In Class I operations in which a negative exposure assessment is not obtained, OSHA has clarified its respiratory protection requirements and has determined that the use of tight-fitting powered air-purifying respirators is permitted if the exposure assessment and monitoring show that exposure levels do not exceed 1 f/cc as an 8 hour time weighted average. Further when supplied air respirators are used in such circumstances, either HEPA egress cartridges or auxiliary bottles of air for supplied air respirators will be allowed. Paragraph (h)(2)(iv) in the construction and shipyard standards is corrected to incorporate these changes. The respirator tables remain unchanged.

This clarification is made to address the concerns of participants that although a higher degree of respiratory protection is needed in Class I operations where a negative exposure assessment is not produced, there are times when safety hazards (e.g., tripping), worker acceptability, configuration of the work area, and feasibility considerations make the choice of a supplied-air respirator less optimal. The record showed that tight-fitting powered air-purifying respirators (PAPRs) are widely accepted, offer additional mobility, and are effective at those levels and therefore are a protective alternative to supplied air respirators. Therefore, when an employer's exposure assessment shows that exposure levels will be below 1.0 fibers per cubic centimeter (f/cc) as an 8-hour time-weighted average, OSHA is allowing use of PAPRs. Where a negative exposure assessment is not produced, but fiber levels are controlled and do not vary above 1.0 f/cc as an 8-hour time-weighted average, OSHA believes use of PAPRs is appropriate.

Additionally, OSHA has noted that operations having higher fiber levels are often quite variable and that the time required to receive sampling results may be lengthy, hence the standards continue to require supplied air respirators when fiber levels are above the 1.0 f/cc level. Thus, the higher degree of protection offered by supplied air respirators is needed, as pointed out by rulemaking participants (Ex. 7–54, Ex. 143 at 48 and 63).

OSHA is also allowing the use of HEPA egress cartridges with supplied air respirators. Participants expressed concern that an auxiliary positive pressure self-contained breathing apparatus was not the only means of adequately providing for escape from the work area when the air supply failed. Many felt that HEPA-escape cartridges were equally effective and should be allowed. (See discussion in Ex. 143 at 65–69). OSHA notes that careful training in the use of HEPA-egress methods and of auxiliary positive pressure self-contained breathing apparatus is essential to their effective use in emergency situations.

6. Hygiene Facilities and Practices for Employees

Paragraph (j) Construction and Shipyard Employment Standards

Some participants pointed to an apparent inconsistency in the hygiene requirements in the standard. OSHA is correcting the provision dealing with clean rooms, (j)(1)(i)(C) in both standards, to clarify that showering is required and *then* the worker is to use a clean room provided by the employer to put on street clothes.

Briefly, the overall scheme for showering following asbestos work is as follows:

1. Class I work involving more than 25 linear or 10 square feet of TSI or surfacing ACM, adjacent showers required except where infeasible, on

ships or for outdoor work. These may HEPA vacuum their work clothes, change to clean work clothes and proceed to a non-adjacent shower.

2. Following Class I jobs involving less than 25 linear or 10 square feet of TSI or surfacing ACM, and Class II asbestos operations in which the PELS may be exceeded, showering is required, but the shower need not be adjacent to the work site, so long as the workers HEPA vacuum their work clothes on dropcloths and use proper procedures for clean-up before proceeding to a non-contiguous shower.

3. Following Class III work where the PELs may be exceeded, HEPA vacuuming of work clothes is required.

For Class III operations involving thermal system insulation and/or surfacing ACM/PACM where there is no exceedence of the PELs, HEPA vacuuming of workclothing is highly recommended, though not required.

7. Communication of Hazards

Paragraph (k) of Construction and Shipyard Employment Standards and paragraph (j) of General Industry.

OSHA is making some corrections of the regulatory text to clarify (i) which materials an employer *must* presume are asbestos-containing, (ii) when a reasonable employer must investigate the possibility that other materials are asbestos-containing, (iii) how to refute a required presumption that materials contain asbestos, (iv) when to make these decisions, and (v) whom to inform.

The term ''due diligence'' is not defined, it means however, that a reasonable employer, informed of this standard and other pertinent regulations, must inquire into the possibility that a building material is asbestos-containing. The required extent of the inquiry may vary, depending on the prevalence of the ACM for that use in that location, previous surveys, inspections, and other knowledge sources, and the date the material was installed.

Paragraph (k)(5)(ii)(B) in the construction and in the shipyard employment standard and paragraph (j)(8)(ii)(B) of the general industry standard are clarified to address concerns of participants regarding the requirement for 3 bulk samples to rebut the presumption that a material is ACM. OSHA clarifying that it is referencing the EPA sampling protocol of 40 CFR 763.86. This requires an accredited inspector (OSHA allows a CIH) to collect samples in a random representative manner from each homogenous area of surfacing material: 3 from each homogeneous area of less than 1,000 square feet, 5 from areas between 1,000 and 5,000 square feet and 7 from areas greater than 5,000 square feet. In addition, one sample is adequate from homogenous patched areas of TSI of less than 6 square or linear feet. For insulated mechanical systems and other ''miscellaneous'' materials, bulk samples are to be collected ''In a manner sufficient to determine whether the material is or is not ACM.''

Further, this scheme will allow the inspector or CIH to determine that a TSI is fiberglass, foam glass, rubber or other non-asbestos containing material and sampling is not required for these materials. Thus, the number of samples required will be lessened in some situations and increased in others, depending on the amount of material present. Actual sampling may be conducted under the supervision of a certified industrial hygienist or accredited inspector, but a ''visual identification'' may be made *only* by a CIH or inspector.

Training Requirements: Questions have arisen regarding the time requirements for ''refresher'' training required in paragraph (k)(9)(ii) of the construction and the shipyard employment standards. OSHA wishes to clarify that for Class I workers and for Class I and Class II competent persons whose training is equivalent to that of 40 CFR part 763, subpart E, appendix C, the annual refresher training shall be of 8 hours duration, equivalent to that in the EPA regulation. For all others trained under the provisions of these standards, annual refresher training is required, but the duration is not specified. OSHA believes that hands-on training is essential for both initial and refresher training. To accomplish this and cover essential health information, a minimum of two hours training will be expected for Class II and III work.

Training for Class II work: In developing the revised standards, OSHA noted that asbestos abatement workers often remove large amounts of the higher hazard materials such as thermal system ACM and sprayed-on ACM and other ACM having somewhat lower exposure potential such as siding, wallboard and other building materials. For this group of workers OSHA continues to believe that training equivalent to that of EPA's asbestos abatement worker training is appropriate.

However, some workers will remove only ACM which is not TSI or surfacing ACM. For those whose work involves removal of only a single generic type of material, OSHA specified that an 8 hour training course would be acceptable. OSHA continues to believe that this time period is necessary for training of workers whose duties include removal of building materials such as roofing, flooring, siding, transite panels and ceiling tiles.

However, it has been brought to the agency's attention that there are some other types of materials other than those listed ACM building components. These other materials include gaskets, firedoors, laboratory hoods, and other materials (for example, see list in Ex. 1–183, EPA's ''Greenbook'' Appendix G, page 40). However, covering all required training for those other materials is generally not assumed to take 8 hours. The training for these materials continues to require covering all topics in (k)(9)(viii) of the Construction and Shipyard Employment Standard, all pertinent work practices and other controls and must have a ''hands-on'' component. OSHA believes that such training would be likely to require at least 4 hours to adequately cover the topics, methods, and hands-on portion. OSHA also recognizes that many different operations will be covered in this type of training and that the time required for adequate training will vary and thus the period is not specified.

Training for Class III Work: OSHA has reviewed the training requirements for Class III work for employers with a stable work force which infrequently encounters limited types of asbestos and generates less than a waste bag full of dust and debris (OSHA notes that the waste bag dimensions must not exceed 60'' by 60''). These operations occur at various locations such as refineries, power plants, or in the communication industry and may involve rapidly completed operations such as removal of a small gasket from a pipeline or drilling a hole in a shingle to run a cable through it. In submissions to the record, participants (e.g., Exhibits 7–21, 7–99, 7–101, 127, 145) presented sampling data indicating these exposures were well-controlled by the use of work practices by workers trained under the provisions of the earlier standards.

The standards require training equivalent to EPA's ''O&M'' training as outlined in 40 CFR 763.92. This training, which was originally intended to serve as part of an operation and maintenance program for schools, provides a basis for training for those operations in most other buildings and facilities. However, OSHA has re-evaluated the requirements for this training in light of the fact that Class III operations under its standards include different activities than managing installed asbestos containing building materials in place. This 16 hour course may not serve to properly prepare those

whose duties include other activities such as changing an intact gasket, in a pipeline, replacing packings or making occasional small opening in shingles to run lines. On the other hand, these jobs often involve only small amounts of asbestos and are usually brief in duration, infrequent, and often take place out of doors requiring different skills so that some of the requirements of the 16 hour course are not relevant.

OSHA has clarified that, as for other provisions of the standards, employers may rely on their well-trained competent persons to decide whether the O&M-type course is appropriate to these tasks. If it is determined that the curriculum, equivalent to that of 40 CFR 763.92 does not adequately cover the topics and work practices needed in an operation, the employer's competent person may certify that the training contained in (k)(9)(viii) is more applicable to that situation and may opt to designate this training, as long as the specific work practices, other controls necessary and ''hands-on'' training will be adequately covered.

OSHA anticipates that the duration of the training will to some extent, reflect the complexity and hazard of the operation, but would be likely to require at least 4 hours of initial training to adequately cover the topics, methods, and hands-on portion. However, the duration of such training is not specified. Annual refresher training for this group of workers is required, without specified duration.

Paragraph (j)(7)(iv) of the General Industry standard is corrected to clarify the requirement for awareness training of housekeepers. The word ''facility'' is replaced with the word ''area.'' This clarifies OSHA's intention that only those workers whose housekeeping duties require them to work in areas of a building or facility in which asbestos or presumed asbestos is present shall receive awareness training. For example, in a refinery in which the only ACM/PACM is outdoor pipe insulation and the housekeepers duties are only within the office building on the site, the employer is not required to provide them awareness training. Awareness training is required for those whose duties might bring them into contact with ACM/PACM.

Signs: The requirements for signs in the construction standard were inadvertently omitted from the general industry standard. The paragraph (k)(6) of the 1926.1101, which requires asbestos warning signs in areas of buildings where there is ACM/PACM, is added to 1910.1001 and becomes paragraph (j)(3)(v).

8. Medical Surveillance

Paragraph (m) Construction and Shipyard Employment Standard.

OSHA inadvertently included more extensive medical requirements for 2 groups of workers who perform lower risk work. Accordingly, OSHA is clarifying paragraph (m)(1)(i) to reduce requirements for medical surveillance for two groups of workers. For the first group, occasional wearers of respirators, the more comprehensive physical examination required by the asbestos standards is not necessary for workers who are required to wear negative pressure respirators while performing Class I, II, or III work for less than 30 days per year. For this group, a physician must ensure that employees are able to use a respirator. The interval for such determinations is one year. This provision is similar to that of 1910.134, the Respiratory Protection Standard, which is currently in rulemaking. This provision may be amended as a result of that process, at which time OSHA may reconsider this provision in the asbestos standards also.

Class II and Class III Medical Surveillance: The second group are workers who perform Class II and Class III operations very briefly and occasionally, and are exposed below the permissible exposure level (PEL). The standard provides medical surveillance for all workers below the PEL who engaged in Class II or III operations for 30 or more days per year. However, OSHA now clarifies that the 30-day requirement should be corrected to exclude days in which less than one hour is spent in Class II or III work when work practices that fully comply with the standard's requirements are followed. As thus modified, the standard more closely reflects OSHA's policy of requiring medical surveillance for workers exposed at or above an action level for 30 or more days per year.

The 1986 asbestos standard required medical surveillance for workers exposed above the action level (then 0.1 f/cc) for 30 or more days per year. OSHA standards for other toxic air contaminants, including lead, cadmium, benzene, and ethylene oxide, similarly trigger medical surveillance by exposure at or above an action level of 30 or more days per year. When the court of appeals remanded the 1986 standard for OSHA to re-evaluate whether the 8-hour time weighted average exposure limit (then 0.2 f/cc) should be lowered, it also instructed OSHA to reconsider making a corresponding reduction in the action level. However, in lowering the 8-hour time weighted average exposure limit (TWA) to 0.1 f/cc in the present standard, OSHA decided not to set an action level equal to half the new TWA. This decision was based on the difficulty of obtaining reliable and reproducible measurements of asbestos concentrations as low as 0.05 f/cc under jobsite conditions (see 59 FR at 40975).

Instead of triggering medical surveillance by an action level of 0.05 f/cc, the asbestos standard required medical surveillance for all workers who engaged in Class I, II, or III work for 30 days or more per year. Thus, for medical surveillance purposes, the standard uses the classification system as a surrogate for the action level. OSHA believed that using Class II and III work in particular to trigger medical surveillance would be approximately the equivalent of triggering medical surveillance by an action level of 0.05 f/cc, for while most Class II and Class III jobs are not expected to exceed the 8-hour TWA of 0.1 f/cc, they involve the removal of substantial amounts of asbestos containing material and may approach or exceed levels of 0.05 f/cc.

OSHA continues to believe that the classification system is a reasonable surrogate for an action level and that workers who perform Class II and/or Class III work for 30 or more days per year should generally receive medical surveillance under the standard. However, OSHA is correcting the standard to exclude from the 30-day count those days in which the worker engages in Class II or III work for one hour or less when such work is performed in accordance with the work practices required by the standard. When the standard's work practices are followed during Class II and Class III work, the rulemaking record shows that the TWA will usually not be exceeded even if the work continues for all or most of an 8-hour work shift (see 59 FR at 41000–41008). Thus, in most cases, employers will choose not to monitor specific jobs because they have historic and/or objective data.

OSHA believes that where historic and/or objective data exempt an employer from monitoring most exposures will be well below the TWA of 0.1 f/cc, and would also be below 0.05 f/cc, if the job takes less than one hour and the proper work practices are used. Therefore, the classification system will be a more accurate surrogate for an action level if those days in which employees perform Class II or Class III work for one hour or less while using proper work practices are excluded from the number of days that count toward the medical surveillance requirement. OSHA believes that this adjustment better aligns the standard

with OSHA's policy of requiring medical surveillance of workers who are exposed to a level equal to or exceeding an action level of half the permissible 8-hour time weighted average for 30 or more days per year.

OSHA believes that the one-hour period is a reasonable cutoff between jobs of brief duration and those that cover a substantial part of the work shift. In addition to more accurately reflecting OSHA's usual medical surveillance policy, this correction will avoid imposing unnecessary recordkeeping burdens on employers by enabling them to avoid recording, for medical surveillance purposes, each day an employee engages in Class II or III work even when that work may last only a few minutes.

9. Appendices

General Industry Standard, Appendix F, Shipyard Employment Standard, Appendix L:

Throughout the discussion of asbestos exposure during brake and clutch repair work in the preamble, OSHA stated that it would require training of technicians/mechanics in the proper use of work practices to be used during these operations. However, language to that effect was inadvertently omitted from the appendices describing the mandatory work practices. This document corrects the text of the appendix in both 1910.1001 and 1915.1001 to include a requirement that technicians/mechanics be trained in the proper use of the preferred or equivalent work practices.

Equivalency of Alternate Methods for Brake Work: OSHA is also correcting Appendix F of the General Industry and Appendix L of the Shipyards Employment standard to indicate that the fiber level required to demonstrate the equivalency of an alternate method of asbestos control in brake and clutch work is 0.016 f/cc. As originally drafted, the standard set the equivalency criterion at 0.004 f/cc. This was based on a NIOSH study (Ex. 1–112) showing that the preferred methods of asbestos control in brake and clutch work could attain exposure levels ranging from 0.004 to 0.016 f/cc. OSHA has determined that the more appropriate value for an equivalent method to attain is the high end of the range of values found to be attainable in this study, or 0.016 f/cc. Setting the equivalency level at this value will assure that an equivalent method provides workers with effective protection against asbestos exposure without making the equivalency criterion so low as to discourage development of alternative methods of protecting brake and clutch workers. The standard lists two preferred methods of asbestos control during brake and clutch work: the Negative Pressure Enclosure/HEPA Vacuum System Method and the Low Pressure/Wet Cleaning Method. The appendices to the general industry and shipyard standards give detailed descriptions of these methods. When these methods are properly used by trained workers, employers are in full compliance with the standard.

The standard also permits the use of equivalent methods that can be shown to comply with the equivalency criterion, as corrected by this document, of 0.016 f/cc. Like the preferred methods, an equivalent method must include a detailed description of the practices that must be followed when the method is used. Since equivalent methods are not set forth in the standard, an employer who uses such a method must have a written description of the method that contains sufficient detail that the method can be reproduced. When the method meets the equivalency criterion and the workers who use it are properly trained, then just as when a preferred method is used, the employer is in full compliance with the standard.

The proposed standard described a method, referred to as the Spray Can/Solvent System Method, that OSHA did not include as a preferred method in the final standard. However, OSHA has determined from the NIOSH study that the Spray Can/Solvent System Method, as described in the proposed standard, meets the corrected equivalency criterion of 0.016 f/cc. Accordingly, the Spray Can/Solvent Spray System Method qualifies as an equivalent method under the corrected equivalency criterion. When employers use the Spray Can/Solvent System Method, they must adhere to the work practices listed in the proposed standard for the method to qualify as an equivalent method. For convenience, those work practices are reiterated here.

(1) The spray can/solvent system shall be used to first wet the brake and clutch parts. Then, the brake and clutch parts shall be wiped clean with a cloth.

(2) The cloth shall be placed in an impermeable, properly labelled, container and then properly disposed of, or the cloth shall be laundered in a way that prevents the release of asbestos fibers in excess of 0.1 fibers per cubic centimeter of air.

(3) Any spills of solvent or any asbestos-containing waste material shall be cleaned up immediately.

(4) The use of dry brushing during solvent spray operations is prohibited.

The foregoing is an adequate written description of the Spray Can Solvent System Method within the meaning of Appendix F to the general industry standard and Appendix L of the shipyard employment standard.

The standard and this correction document are issued under the authority of sections 4, 6(b), 8(c), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act, 40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); and 29 CFR Part 1911.

Correction of Publication

The following corrections are made in the final rule for Occupational Exposure to Asbestos published in the **Federal Register** on August 10, 1994 (59 FR 40964).

1. On page 40964, in the first column, in the first paragraph entitled ''Summary,'' line 23 is corrected by removing the words ''high hazard''.

2. On page 40972, line 11 of the first column, the word ''informing'' is corrected to read ''inform''.

3. On page 40972, in the first column, in the second full paragraph, line 14, the words ''after 1979'' are corrected to read ''no later than 1980''.

4. On page 40975, in the first column, in the last paragraph, line 10 is corrected by adding the words ''perform housekeeping'' after the word ''who''.

5. On page 40977, line 17 of the second column, the words ''Class II'' are corrected to read ''Class III''.

6. On page 40977, in the second to third column, in the paragraph under the heading entitled ''*Disturbance*,'' lines 4 through 7 are corrected to read ''definition, disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM. It also includes''.

7. On page 40978, in the first column, the paragraph under the heading entitled ''*Presumed Asbestos-Containing Material (PACM)*'' is corrected to read:

* * * * *

In all three standards, ''presumed asbestos containing material,'' ''PACM'' means thermal system insulation and sprayed on and/or troweled on, or otherwise applied surfacing material in buildings constructed no later than 1980. In many places in the Preamble, OSHA refers to ''high risk'' ACM and PACM. These terms are not used in the regulatory text. The term ''high risk'' refers to the possibility or potential for injury and does not mean injury will necessarily occur. OSHA uses these

terms in the Preamble in a relative sense to describe its findings that TSI and surfacing material are more prevalent and can be more friable than many other asbestos-containing materials in buildings. As discussed elsewhere in the Preamble, OSHA finds that the OSHA-required provisions involving all types of ACM should result in low exposure levels that would protect employees from significant risk. Although these materials may have been installed in small quantities after 1980, OSHA finds that their installation is unlikely after that date.

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8. On page 40986, in the first column, in the first paragraph, line 21, the word ''a'' is corrected to read ''an''.

9. On page 40986, line 5 of the third column is corrected by removing the word ''listing''.

10. On page 40987, in the third column, under the heading entitled ''*Floor Maintenance,*'' in the first paragraph, line 17, the word ''speed'' is corrected to read ''speeds''.

11. On page 40988, in the second column, in the second full paragraph, line 15, the word ''Method'' is corrected to read ''Methods''.

12. On page 40988, in the third column, in the third full paragraph, line 4 is corrected by removing the comma after the word ''prior''.

13. On page 40988, in the third column, in the third full paragraph, line 11, the word ''if'' is corrected to read ''is''.

14. On page 40988, in the third column, in the last paragraph, line 4 is corrected by adding the word ''the'' after the word ''of''.

15. On page 40989, in the second column, under the heading entitled ''*Other Basic Controls,*'' in the first paragraph, line 13, the number ''(2)'' is corrected to read ''(3)''.

16. On page 40990, in the first column, in the second full paragraph, the last line, the words ''see (g)(4)(F)'' are corrected to read ''see paragraph (g)(4)(vi)''.

17. On page 40990, in the second column, in the third full paragraph, line 7, the words ''paragraph B'' are corrected to read ''paragraph (b)''.

18. On page 40991, line 12 of the first column is corrected to read ''asbestos panel: 9 square feet; pipe''.

19. On page 41000, in the first column, in the first full paragraph, the last line is corrected by removing the words ''in a''.

20. On page 41000, in the third column, in the first paragraph, line 5, the words ''paragraph (g)(ii)(a)'' are corrected to read ''paragraph (g)(8)(i)''.

21. On page 41004, in the second column, under the heading entitled ''*Roofing Operations,*'' in the first paragraph, line 19 is corrected by adding the word ''the'' after the word ''to''.

22. On page 41009, in the second column, in the last paragraph, line 3, the number ''(9)'' is corrected to read ''(10)''.

23. On page 41009, in the second column, in the last paragraph, line 18, the word ''contained'' is corrected to read ''containing''.

24. On page 41009, in the second column, in the last paragraph, line 20, the words ''Paragraph (g)(9)'' are corrected to read ''Paragraph (g)(10)''.

25. On page 41009, in the third column, in the first paragraph, line 1, the words ''paragraph (g)'' are corrected to read ''paragraph (g)(10)(i)''.

26. On page 41009, in the third column, in the first paragraph, line 11, the words ''(g)(g)(iv)'' are corrected to read ''(g)(10)(i)''.

27. On page 41010, in the first column, in the third full paragraph, line 3, the words ''engineeromg cpmtrp'' are corrected to read ''engineering controls''.

28. On page 41014, in the third column, in the last paragraph, line 16, the words ''before 1980'' are corrected to read ''no later than 1980''.

29. On page 41015, in the first column, in the third full paragraph, line 1 is corrected by removing the word ''the''.

30. On page 41016, in the first column, in the last paragraph, lines 8, 9, 10, and 15, the words ''high hazard'' are corrected to read ''high risk''.

31. On page 41016, in the second column, in the last paragraph, line 6 is corrected by removing the word ''a''.

32. On page 41016, line 28 of the third column, the words ''high hazard'' are corrected to read ''potentially high risk''.

33. On page 41017, in the first column, in the first full paragraph, line 18, the words ''before 1980'' are corrected to read ''no later than 1980''.

34. On page 41017, in the second column, beginning in line 6, the sentence ''Neither EPA's revised MAP nor OSHA requires specific training or accreditation of persons who only visually inspect the condition of ACM/PACM.'' is removed.

35. On page 41020, in the first column, under the heading entitled ''*Training Requirements for Employees Performing Class III and IV Work,*'' in the first paragraph, lines 25 through 28 are corrected to read ''consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2).''.

36. On page 41023, in the second column, in the first full paragraph, line 11 is corrected by adding the word ''school'' after the word ''asbestos-containing''.

37. On page 41023, in the third column, in the second paragraph, lines 8 through 11 are corrected to read ''trained in a course consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2). If clean-up work is done within''.

38. On page 41044, in Table 7, in the last column entitled ''Total annual incremental control costs,'' the figure ''24,787,345'' is corrected to read ''14,787,345''.

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39. On page 41057, in the third column, in § 1910.1001, paragraph (a)(2), line 5, the number ''1926.58'' is corrected to read ''1926.1101''.

40. On page 41057, in the third column, in § 1910.1001, paragraph (a)(3), line 7, the number ''1915.191'' is corrected to read ''1915.1001''.

41. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of ''*Certified industrial hygienist*'' is added before the definition of ''*Director*'' to read:

* * * * *

(b) * * *

Certified industrial hygienist (CIH) means one certified in the practice of industrial hygiene by the American Board of Industrial Hygiene.

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42. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of ''*Homogeneous area*'' is added before the definition of ''*Industrial hygienist*'' to read:

* * * * *

(b) * * *

Homogeneous area means an area of surfacing material or thermal system insulation that is uniform in color and texture.

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43. On page 41058, in the first column, in § 1910.1001, paragraph (b), the definition of ''*PACM*'' is corrected to read:

* * * * *

(b) * * *

PACM means ''presumed asbestos containing material.''

* * * * *

44. On page 41058, in the first column, in § 1910.1001, paragraph (b), a definition of ''*Presumed asbestos*

containing material'' is added before the definition of ''*Regulated area*'' to read:

* * * * *

(b) * * *

Presumed asbestos containing material means thermal system insulation and surfacing material found in buildings constructed no later than 1980. The designation of a material as ''PACM'' may be rebutted pursuant to paragraph (j)(8) of this section.

* * * * *

45–48. On page 41058, in the first column, in § 1910.1001, paragraph (b), the following definitions are added in alphabetical order after the definition of ''*Regulated area*'' to read:

* * * * *

(b) * * *

Surfacing ACM means surfacing material which contains more than 1% asbestos.

Surfacing material means material that is sprayed, troweled-on or otherwise applied to surfaces (such as acoustical plaster on ceilings and fireproofing materials on structural members, or other materials on surfaces for acoustical, fireproofing, and other purposes).

Thermal System Insulation (TSI) means ACM applied to pipes, fittings, boilers, breeching, tanks, ducts or other structural components to prevent heat loss or gain.

Thermal System Insulation ACM means thermal system insulation which contains more than 1% asbestos.

* * * * *

49. On page 41058, in the first column, in § 1910.1001, paragraph (c)(1), line 4 is corrected by adding the word ''in'' after the word ''asbestos''.

50. On page 41058, in the first column, in § 1910.1001, paragraph (c)(1), line 8, the word ''of'' is corrected to read ''to''.

51. On page 41058, in the first column, in § 1910.1001, paragraph (c)(2), line 7 is corrected by adding the words ''as determined by the method prescribed in Appendix A to this section, or by an equivalent method'' after the word ''minutes''.

52. On page 41058, in § 1910.1001, paragraph (d)(5), line 5 of the third column, the words ''action level'' are corrected to read ''PEL''.

53. On page 41059, in the second column, in § 1910.1001, paragraph (f)(1)(viii) is corrected by removing the word ''of'' on the last line of the paragraph.

54. On page 41059, in the third column, in § 1910.1001, paragraph (f)(3)(i), line 24, the words ''Appendix F of'' are corrected to read ''Appendix F to''.

55. On page 41060, in the third column above Table 1, in § 1910.1001, paragraph (g)(2)(ii) introductory text, line 2 is corrected by adding the words ''tight-fitting'' before the word ''powered''.

56. On page 41060, in § 1910.1001, paragraph (g)(2), in Table 1, under the heading ''Airborne concentration of asbestos or conditions of use,'' lines 1 through 3 are corrected to read ''Not in excess of 1 f/cc (10 X PEL).''

57. On page 41060, in the first column below Table 1, in § 1910.1001, paragraph (g)(3)(iii), line 2 is corrected by removing the comma after the word ''shall''.

58–59. On page 41060, in the first column below Table 1, in § 1910.1001, paragraph (g)(3)(iv), line 10, the word ''employee'' is corrected to read ''employees''.

60. On page 41060, in the second column below Table 1, in § 1910.1001, paragraph (g)(4)(ii), line 11, the word ''of'' is corrected to read ''to''.

61. On page 41060, in the second column below Table 1, in § 1910.1001, paragraph (g)(4)(ii), the last line, the number ''(ii)'' is corrected to read ''(i)''.

62. On page 41060, in the third column below Table 1, in § 1910.1001, paragraph (h)(2)(iv), the last line, the number ''(2)'' is corrected to read ''(4)''.

63. On page 41061, in the first column, in § 1910.1001, paragraph (i)(2)(i), line 4 is corrected by adding a comma after the word ''limit''.

64. On page 41061, in the second column, in § 1910.1001, paragraph (j) introductory text, line 30 is corrected by removing a closed parenthesis after the number ''1926.58''.

65. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 5 is corrected by adding the words ''in buildings constructed no later than 1980'' after the word ''ACM''.

66. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 8, the word ''(B)'' is corrected to read ''(b)''.

67. On page 41061, in the second column, in § 1910.1001, paragraph (j)(1), line 9, the word ''standard'' is corrected to read ''section''.

68. On page 41061, in § 1910.1001, paragraph (j)(1), line 1 of the third column, the words ''paragraph (j)(6)'' are corrected to read ''paragraph (j)(8)(iii)''.

69. On page 41061, in the third column, in § 1910.1001, paragraph (j)(2)(i) is corrected to read:

* * * * *

(j) * * *

(2) * * * (i) Building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site. Employers and building and facility owners shall exercise due diligence in complying with these requirements to inform employers and employees about the presence and location of ACM and PACM.

* * * * *

70. On page 41061, in the third column, in § 1910.1001, paragraph (j)(2)(iii) is corrected to read:

* * * * *

(j) * * *

(2) * * *

(iii) Building and facility owners shall inform employers of employees, and employers shall inform employees who will perform housekeeping activities in areas which contain ACM and/or PACM of the presence and location of ACM and/or PACM in such areas which may be contacted during such activities.

* * * * *

71. On page 41061, in the third column, in § 1910.1001, paragraph (j)(3)(ii) is corrected to read:

* * * * *

(j) * * *

(3) * * *

(ii) *Sign specifications.* (A) The warning signs required by paragraph (j)(3) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING

ARE REQUIRED IN THIS AREA

* * * * *

72. On page 41061, in the third column, in § 1910.1001, paragraph (j)(3)(iv), line 5, the number ''(1)'' is corrected to read ''(3)''.

73. On page 41061, in the third column, in § 1910.1001, a new paragraph (j)(3)(v) is added to read:

* * * * *

(j) * * *

(3) * * *

(v) At the entrance to mechanical rooms/areas in which employees reasonably can be expected to enter and which contain ACM and/or PACM, the building owner shall post signs which identify the material which is present,

its location, and appropriate work practices which, if followed, will ensure that ACM and/or PACM will not be disturbed.

* * * * *

74. On page 41061, in the third column, in § 1910.1001, paragraph (j)(4)(i), line 5 is corrected by adding three sentences after the word ''containers.'' to read:

* * * * *

(j) * * *

(4) * * *

(i) * * * When a building owner or employer identifies previously installed ACM and/or PACM, labels or signs shall be affixed or posted so that employees will be notified of what materials contain ACM and/or PACM. The employer shall attach such labels in areas where they will clearly be noticed by employees who are likely to be exposed, such as at the entrance to mechanical room/areas. Signs required by paragraph (j)(3) of this section may be posted in lieu of labels so long as they contain information required for labelling.

* * * * *

75. On page 41062, in the first column, in § 1910.1001, paragraph (j)(5), line 9, the number ''(4)'' is corrected to read ''(6)''.

76. On page 41062, in the first column, in § 1910.1001, paragraph (j)(6), line 2, the number ''(2)'' is corrected to read ''(4)''.

77. On page 41062, in the second column, in § 1910.1001, paragraph (j)(7)(iv), line 3, the words ''a facility'' are corrected to read ''an area''.

78. On page 41062, in the second column, in § 1910.1001, paragraph (j)(7)(iv), lines 14 and 15, the words ''are or will'' are corrected to read ''perform housekeeping''.

79. On page 41062, in § 1910.1001, paragraph (j)(8)(i), line 11 of the third column, the word ''(n)'' is corrected to read ''(m)''.

80. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(A), line 4, the word ''asbestos'' is corrected to read ''ACM''.

81. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(A), line 5 is corrected by adding the word ''or'' after the word ''material;''.

82. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 3, the word ''asbestos'' is corrected to read ''ACM''.

83. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), lines 5 through 7 are corrected to read ''analysis of bulk samples collected in the manner described in 40 CFR 763.86. The''.

84. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 17, the word ''of'' is corrected to read ''or''.

85. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(ii)(B), line 19, the word ''of'' is corrected to read ''or''.

86. On page 41062, in the third column, in § 1910.1001, paragraph (j)(8)(iii), the last line, the words ''asbestos free'' are corrected to read ''not ACM''.

87. On page 41062, in the third column, in § 1910.1001, paragraph (k)(1), lines 3 and 4 are corrected to read ''practicable of ACM waste and debris and accompanying dust.''.

88. On page 41062, in the third column, in § 1910.1001, paragraph (k)(4), line 3 is corrected by adding the words ''asbestos containing waste and debris'' after the word ''vacuuming''.

89. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (k)(7)(ii), line 3, the word ''speed'' is corrected to read ''speeds''.

90. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (k)(7)(iv) is correctly designated as paragraph (k)(8), and is corrected to read:

* * * * *

(k) * * *

(8) Waste and debris and accompanying dust in an area containing accessible ACM and/or PACM or visibly deteriorated ACM, shall not be dusted or swept dry, or vacuumed without using a HEPA filter.

* * * * *

91. On page 41063, in the first column above Table 2, in § 1910.1001, paragraph (1) entitled ''Medical surveillance'' is correctly designated as paragraph (l) entitled ''Medical surveillance''.

92. On page 41063, in § 1910.1001, paragraph (l)(2)(ii), line 6 in the third column is corrected by adding the words ''to this section'' after the words ''Appendix D''.

93. On page 41063, in § 1910.1001, paragraph (l)(3)(ii), in Table 2, in the second column heading under the heading of ''Age of employee'' the number ''40'' is corrected to read ''45''.

94. On page 41063, in the third column below Table 2, in § 1910.1001, paragraph (l)(7)(i)(B), line 4 is corrected by removing the word ''and''.

95. On page 41063, in the third column below Table 2, in § 1910.1001, paragraph (l)(7)(i)(C), line 6 is corrected by removing the period and by adding ''; and'' after the word ''treatment''.

96–97. On page 41064, in the second column, in § 1910.1001, paragraph (m)(5)(iii), line 3, the number ''(2)'' is corrected to read ''(3)''.

98. On page 41064, in the third column, in § 1910.1001, paragraph (p)(2), line 1 is corrected by removing the letter ''F,''.

Appendix B to § 1910.1001 [Corrected]

99. On page 41065, in the first and second columns, in § 1910.1001, in Appendix B, the table is corrected so that the word ''Air'' is removed from between the double lines both places it appears and added following the word ''Matrix''.

100. On page 41065, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''*1. Introduction*,'' in the definition of ''*Asbestos*,'' the chemical formula for Crocidolite is corrected to read ''$Na_2Fe_3^{2+}Fe_2^{3+}Si_8O_{22}(OH)^2$''.

101. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the definition of ''*Walton-Beckett Graticule*,'' line 4, the ''#'' sign is corrected to read '' ''.

102. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the definition of ''*Walton-Beckett Graticule*,'' line 11, the number ''2'' is corrected to read ''1''.

103. On page 41065, in the third column, in § 1910.1001, in Appendix B, in the paragraph under the heading entitled ''1.2 Principle,'' line 6 is corrected by removing the word ''a''.

104. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''*4. Interferences*,'' in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

105. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''*5.1.1* Sampling assembly,'' in the first paragraph, line 8, the number ''0.8-'' is corrected to read ''0.4''.

106. On page 41066, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''*5.1.1*

Sampling assembly,'' a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

107. On page 41066, in § 1910.1001, in Appendix B, under the heading entitled ''*5.1.3* Sampling pump,'' lines 3 and 4 of the third column, the words ''2.5 liters per minute (L/min)'' are corrected to read ''the collection rate''.

108. On page 41066, in the third column, in § 1910.1001, in Appendix B, in the paragraph entitled ''*5.2.1*,'' line 2 is corrected by removing the words ''(see Figure 3)''.

109. On page 41066, in the third column, in § 1910.1001, in Appendix B, under the heading entitled ''*5.2.5*,'' lines 8 and 9 of the ''Note'' are corrected to read ''pressure changes, correct the flow rate using the formula shown in the section ''Sampling Pump Flow Rate Corrections'' at the end of this appendix.''.

110. On page 41067, in the first column, in § 1910.1001, in Appendix B, the paragraph entitled ''*5.2.11*'' is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

111. On page 41067, in the first column, in § 1910.1001, in Appendix B, in the paragraph entitled ''*5.3.2*,'' the last line, the words ''without rattling'' are corrected to read ''in such a manner that they will not rattle''.

112. On page 41067, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''6.5 Sample Mounting,'' the paragraph following the Note is corrected by removing the sentence, ''A drawing is shown in Figure 4.''.

113. On page 41068, in the first column, in § 1910.1001, in Appendix B, under the heading entitled ''*6.6.2* Counting Fibers,'' paragraph (9), the last line, the number ''2'' is corrected to read ''1''.

114. On page 41068, in the third column, in § 1910.1001, in Appendix B, under the heading entitled ''7.3. Recount Calculations,'' the formula in the third paragraph is corrected to read:

* * * * *

7.3 Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times \left(\sqrt{AC_{AVG}}\right) \times CV_{FB}$$

* * * * *

115. On page 41069, in the second column, in § 1910.1001, in Appendix B, under the heading entitled ''*Quality Control*,'' in the first paragraph, lines 6 and 7 are corrected by removing the words ''for the CV curve shown below''.

116. On page 41069, in the third column, in § 1910.1001, in Appendix B, under the heading entitled ''*Walton-Beckett Graticule*,'' paragraph (7), line 12 is corrected to read ''Field Area = $\pi(D/2)^2$''.

Appendix F to § 1910.1001 [Corrected]

117. On page 41070, in the first column, in § 1910.1001, in Appendix F, in the introductory paragraph, line 7 is corrected by adding the words ''by trained employees'' after the word ''practices''.

118. On page 41070, in the third column, in § 1910.1001, in Appendix F, under the heading entitled ''*[A] Negative Pressure Enclosure/HEPA Vacuum System Method*,'' paragraph (6), line 5, the words ''paragraph (j)(2)(ii)'' are corrected to read ''paragraph (j)(4)''.

119. On page 41070, in the third column, in § 1910.1001, in Appendix F, under the heading entitled ''*[A] Negative Pressure Enclosure/HEPA Vacuum System Method*,'' paragraph (7), line 5, the word ''the'' is corrected to read ''this''.

120. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled ''*[B] Low Pressure/Wet Cleaning Method*,'' paragraph (6), line 5, the words ''paragraph (j)(2)(ii)'' are corrected to read ''paragraph (j)(4)''.

121. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled ''*[C] Equivalent Methods*,'' line 12, the number ''0.004'' is corrected to read ''0.016''.

122. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled ''*[D] Wet Method*,'' paragraph (2), line 3, the words ''paragraph (j)(2)(ii) of the standard'' are corrected to read ''paragraph (j)(4) of this section''.

123. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled ''*[D] Wet Method*,'' paragraph (2), lines 4 and 5, the words ''the standard'' are corrected to read ''this section''.

124. On page 41071, in the first column, in § 1910.1001, in Appendix F, under the heading entitled ''*[D] Wet Method*,'' paragraph (3), line 4, the words ''the standard'' are corrected to read ''this section''.

Appendix G to § 1910.1001 [Corrected]

125. On page 41071, in the second column, in § 1910.1001, in Appendix G, paragraph III.B., line 3, the word ''to'' is corrected to read ''the''.

Appendix J to § 1910.1001 [Corrected]

126. On page 41071, in the second column, in § 1910.1001, in Appendix J, line 3 of the title is corrected by removing a closed parenthesis after the word ''Non-Mandatory''.

127. On page 41073, in the second column, in § 1910.1001, in Appendix J, under the heading entitled ''1.8 Toxicology,'' the last line in the paragraph is corrected by adding the words ''and 29 CFR 1915.1001'' after the number ''1926.1101''.

128. On page 41073, in the third column, in § 1910.1001, in Appendix J, under the heading entitled ''2.4 Shipment,'' paragraph (a), line 2 is corrected by removing the words ''(such as the OSHA 21)''.

129. On page 41078, in the first column, in § 1910.1001, in Appendix J, the heading entitled ''*Auxiliary Information*'' is correctly designated as ''*4. Auxiliary Information*''.

130. On page 41078, in the second column, in § 1910.1001, in Appendix J, the paragraph under the heading entitled ''4.3 Polarized Light Technique,'' beginning on line 10, is corrected by removing the sentence, ''A compensator is a piece of mineral with known properties that ''compensates'' for some deficiency in the optical train.''.

§ 1915.1001 [Corrected]

131. On page 41080, in the first column, in § 1915.1001, the Authority citation, line 7, the word ''(41 FR 35736)'' is corrected to read ''(41 FR 25059), 9–83 (48 FR 35736),''.

132. On page 41080, in the second column, in § 1915.1001, paragraph (b), the definition of ''*Building/facility owner*'' is corrected to read:

* * * * *

(b) * * *

Building/facility/vessel owner is the legal entity, including a lessee, which exercises control over management and record keeping functions relating to a building, facility, and/or vessel in

which activities covered by this standard take place.

* * * * *

133. On page 41080, in the second column, in § 1915.1001, paragraph (b), the definition of ''*Certified Industrial Hygienist*,'' line 3 is corrected by removing the word ''comprehensive''.

134. On page 41080, in the third column, in § 1915.1001, paragraph (b), the definition of ''*Class IV asbestos work*'' is corrected to read:

* * * * *

(b) * * *

Class IV asbestos work means maintenance and custodial activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II, and III activities.

* * * * *

135. On page 41080, in the third column, in § 1915.1001, paragraph (b), the definition of ''*Disturbance*,'' the first sentence is corrected to read:

* * * * *

(b)* * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM.* * *

* * * * *

136. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Glovebag*,'' line 1, the word ''an'' is corrected to read ''not more than a 60 x 60 inch''.

137. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Intact*,'' line 3, the word ''it'' is corrected to read ''the asbestos''.

138. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Modification*,'' line 2, the words ''paragraph (g)(6)(2)'' are corrected to read ''paragraph (g)(6)(ii) of this section''.

139. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Modification*,'' line 12 is corrected by removing the number ''(ii)''.

140. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Negative Initial Exposure Assessment*,'' line 4, the words ''paragraph (f)(iii)'' are corrected to read ''paragraph (f)(2)(iii)''.

141. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Presumed Asbestos Containing Material*,'' line 7, the number ''(4)'' is corrected to read ''(5)''.

142. On page 41081, in the first column, in § 1915.1001, paragraph (b), the definition of ''*Qualified person*'' is corrected to read:

* * * * *

(b) * * *

Qualified person means, in addition to the definition in 29 CFR 1926.32(f), one who is capable of identifying existing asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, who has the authority to take prompt corrective measures to eliminate them, as specified in 29 CFR 1926.32(f); in addition, for Class I and Class II work who is specially trained in a training course which meets the criteria of EPA's Model Accreditation Plan (40 CFR part 763) for supervisor, or its equivalent, and for Class III and Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2).

* * * * *

143. On page 41081, in the second column, in § 1915.1001, paragraph (b), the definition of ''*Regulated area*,'' line 12 is corrected by removing the number ''(6)''.

144. On page 41081, in the second column, in § 1915.1001, paragraph (c)(1), line 8, the word ''of'' is corrected to read ''to''.

145. On page 41081, in § 1915.1001, paragraph (c)(2), line 5 of the third column, the word ''of'' is corrected to read ''to''.

146. On page 41081, in the third column, in § 1915.1001, paragraph (d)(3), line 13 is corrected by removing the number ''(1)''.

147. On page 41082, in the first column, in § 1915.1001, paragraph (e)(2), line 6 is corrected by removing the words ''concentrations of''.

148. On page 41082, in the first column, in § 1915.1001, paragraph (e)(2), line 12, the number ''(6)'' is corrected to read ''(7)''.

149. On page 41082, in the first column, in § 1915.1001, paragraph (e)(4), line 3, the number ''(2)'' is corrected to read ''(1)''.

150. On page 41082, in the first column, in § 1915.1001, paragraph (f)(1)(i), line 2, the word ''of'' is corrected to read ''or''.

151–154. On page 41082, in the second column, in § 1915.1001, paragraph (f)(2)(ii) is corrected to read:

* * * * *

(f) * * *

(2) * * *

(ii) Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

(iii) * * *

* * * * *

155. On page 41082, in the third column, in § 1915.1001, paragraph (f)(3)(iii), line 4 is corrected to read, ''operated in the pressure demand mode, or other positive pressure mode respirator,''.

156. On page 41082, in the third column, in § 1915.1001, paragraph (f)(4), line 1 is corrected to read, ''(4) *Termination of monitoring.* (i) If''.

157. On page 41083, in § 1915.1001, paragraph (f)(4)(i), line 3 of the first column, the word ''measurement'' is corrected to read ''measurements''.

158. On page 41083, in the first column, in § 1915.1001, paragraph (f)(5) is redesignated as paragraph (f)(6) and a new paragraph (f)(5) is added to read:

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.* (i) The employer shall notify affected employees of the monitoring results that represent that employee's exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employee's exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

* * * * *

159. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(i) is corrected to read:

* * * * *

(g) * * *

(1) * * *

(i) Vacuum cleaners equipped with HEPA filters to collect all debris and dust containing ACM and PACM, except

as provided in paragraph (g)(8)(ii) of this section in the case of roofing material;

* * * * *

160. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(ii), lines 9 and 10, the words ''slipping hazards;'' are corrected to read ''except as provided in paragraph (g)(8)(ii) of this section;''.

161. On page 41083, in the first column, in § 1915.1001, paragraph (g)(1)(iii), line 3 is corrected by adding the words ''except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply'' after the word ''containers''.

162. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(A) is corrected to read:

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(A) Critical barriers shall be placed over all the openings to the regulated area, except where activities are performed outdoors; or

* * * * *

163. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(B), line 13 is corrected by adding the words ''Phase Contrast Microscopy'' before the word ''(PCM)''.

164. On page 41083, in the third column, in § 1915.1001, paragraph (g)(4)(ii)(B) is corrected by adding the following sentence to the end of the paragraph, ''Exception: For work completed outdoors where employees are not working in areas adjacent to the regulated areas, this paragraph (g)(4)(ii) is satisfied when the specific control methods in paragraph (g)(5) of this section are used.''.

165. On page 41083, in the third column, in § 1915.1001, paragraph (g)(5)(i) introductory text, line 2, the word ''shall'' is corrected to read ''may''.

166. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(i)(B)(*1*), line 3 is corrected by adding the word ''be'' after the word ''shall''.

167. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii) introductory text is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) Glove bag systems may be used to remove PACM and/or ACM from straight runs of piping and elbows and other connections with the following specifications and work practices:

* * * * *

168. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(A)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(A) * * *

(*2*) Glovebags used on elbows and other connections must be designed for that purpose and used without modifications.

* * * * *

169. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(B)(*4*), line 3, the number ''150°'' is corrected to read ''150°F''.

170. On page 41084, in the first column, in § 1915.1001, paragraph (g)(5)(ii)(B)(*9*), line 2, the word ''removals'' is corrected to read ''removal operations''.

171. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii) introductory text, line 3, the word ''shall'' is corrected to read ''may''.

172. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(A), line 2, the word ''bags'' is corrected to read ''bag''.

173. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(B)(*1*), line 3, the number ''(2)'' is corrected to read ''(*4*)''.

174. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iii)(B)(*2*), line 4 is corrected by adding the words ''until it is completed at which time the bag shall be collapsed prior to removal of the bag from the pipe'' after the word ''operation''.

175. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv) introductory text, line 3, the word ''shall'' is corrected to read ''may''.

176. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv)(A)(*2*), line 2 is corrected by adding the word ''the'' after the word ''in''.

177. On page 41084, in the second column, in § 1915.1001, paragraph (g)(5)(iv)(B)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) The box shall be smoke-tested for leaks and any leaks sealed prior to each use.

* * * * *

178. On page 41084, in the third column, in § 1915.1001, paragraph (g)(5)(vi)(C) is correctly designated as paragraph (g)(5)(vi)(B).

179. On page 41084, in the third column, newly designated paragraph (g)(5)(vi)(B)(*1*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(vi) * * *

(B) * * *

(*1*) Before use, the mini-enclosure shall be inspected for leaks and smoke-tested to detect breaches, and any breaches sealed.

* * * * *

180. On page 41084, in the third column, in § 1915.1001, newly designated paragraph (g)(5)(vi)(B)(*3*), line 1 is corrected by adding a comma after the word ''use''.

181–182. On page 41084, in the third column, in § 1915.1001, newly designated paragraph (g)(5)(vi)(B)(*3*), line 4, the word ''minienclosure'' is corrected to read ''mini-enclosure''.

183. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(ii) introductory text, line 20, the words ''(g)(4)(i)(B)(*2*)'' are corrected to read ''(g)(4)(ii)(B)''.

184. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii), line 6 is corrected by adding the words ''of this section'' after the words ''paragraph (g)(6)''.

185. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii), line 10, the word ''Supportm'' is corrected to read ''Support''.

186. On page 41085, in the first column, in § 1915.1001, paragraph (g)(6)(iii) is corrected by adding a sentence to the end of the paragraph to read, ''The submission shall not constitute approval by OSHA.''.

187. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(i), line 1 is corrected by removing the comma after the word ''work''.

188. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(ii) introductory text, line 4, the number ''(4)'' is corrected to read ''(2)''.

189. On page 41085, in the first column, in § 1915.1001, paragraph (g)(7)(ii) introductory text, line 5 is corrected by adding a comma after the word ''job''.

190. On page 41085, in the second column, in § 1915.1001, paragraph (g)(7)(ii)(B), line 8, the words ''(g)(4)(i)(B)(2)'' are corrected to read ''(g)(4)(ii)(B)''.

191. On page 41085, in the second column, in § 1915.1001, paragraph (g)(7)(iv), line 4, the words ''(g)(3)(i) through (v)'' are corrected to read ''(g)(1)(i) through (g)(1)(iii)''.

192. On page 41085, in the second column, in § 1915.1001, paragraph

(g)(8)(i) introductory text, line 11, the number ''(8)'' is corrected to read ''(9)''.

193. On page 41085, in the second column, in § 1915.1001, paragraph (g)(8)(i)(F), line 4, the number ''(iv)'' is corrected to read ''(i)''.

194. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(B) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(B) Wet methods shall be used to remove roofing materials that are not intact, or that will be rendered not intact during removal, unless such wet methods are not feasible or will create safety hazards.

* * * * *

195. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(D) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(D) When removing built-up roofs with asbestos-containing roofing felts and an aggregate surface using a power roof cutter, all dust resulting from the cutting operation shall be collected by a HEPA dust collector, or shall be HEPA vacuumed by vacuuming along the cut line. When removing built-up roofs with asbestos-containing roofing felts and a smooth surface using a power roof cutter, the dust resulting from the cutting operation shall be collected either by a HEPA dust collector or HEPA vacuuming along the cut line, or by gently sweeping and then carefully and completely wiping up the still-wet dust and debris left along the cut line. The dust and debris shall be immediately bagged or placed in covered containers.

* * * * *

196. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(ii)(E) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(E) Asbestos-containing material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist:

(*1*) Any ACM that is not intact shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift. While the material remains on the roof it shall either be kept wet, placed in an impermeable waste bag, or wrapped in plastic sheeting.

(*2*) Intact ACM shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift.

* * * * *

197. On page 41085, in the third column, in § 1915.1001, a new paragraph (g)(8)(ii)(H) is added to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(H) Notwithstanding any other provision of this section, removal or repair of sections of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used to remove the material and no visible dust is created by the removal method used. In determining whether a job involves less than 25 square feet, the employer shall include all removal and repair work performed on the same roof on the same day.

* * * * *

198. On page 41085, in the third column, in § 1915.1001, paragraph (g)(8)(iii) introductory text is corrected to read:

* * * * *

(g) * * *

(8) * * *

(iii) When removing cementitious asbestos-containing siding and shingles or transite panels containing ACM on building exteriors (other than roofs, where paragraph (g)(8)(ii) of this section applies) the employer shall ensure that the following work practices are followed:

* * * * *

199. On page 41086, in the first column, in § 1915.1001, paragraph (g)(8)(v)(A), line 2 is corrected by adding the word ''to'' after the word ''prior''.

200. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(iii), line 9 is corrected by adding the words ''or another isolation method'' after the word ''section''.

201. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(iv), line 4, the number ''(4)'' is corrected to read ''(2)''.

202. On page 41086, in the second column, in § 1915.1001, paragraph (g)(9)(v), line 7, the words ''paragraph (e)(4)(iii)'' are corrected to read ''paragraph (f)(2)(iii)''.

203. On page 41086, in the second column, in § 1915.1001, paragraph (g)(10) introductory text, line 5, the number ''(8)'' is corrected to read ''(9)''.

204. On page 41086, in the third column, in § 1915.1001, paragraph (g)(11)(ii), line 19 is corrected by adding the words ''to this section'' after the words ''Appendix L''.

205. On page 41086, in the third column, in § 1915.1001, a new paragraph (g)(12) is added to read:

* * * * *

(g) * * *

(12) Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing materials. Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(12) when installing, removing, repairing, or maintaining intact roof cements, mastics, coatings, or flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(12), or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(12).

(i) Before work begins and as needed during the job, a qualified person who is capable of identifying asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate such hazards, shall conduct an inspection of the worksite and determine that the roofing material is intact and will likely remain intact.

(ii) All employees performing work covered by this paragraph (g)(12) shall be trained in a training program that meets the requirements of paragraph (k)(9)(viii) of this section.

(iii) The material shall not be sanded, abraded, or ground. Manual methods which do not render the material non-intact shall be used.

(iv) Material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist. All such material shall be removed from the roof as soon as is practicable, but in any event no later than the end of the work shift.

(v) Where roofing products which have been labeled as containing asbestos pursuant to paragraph (k)(8) of this section are installed on non-residential roofs during operations covered by this paragraph (g)(12), the employer shall notify the building owner of the

presence and location of such materials no later than the end of the job.

* * * * *

206. On page 41086, in the third column, in § 1915.1001, paragraph (h)(1)(iii) is corrected to read:

* * * * *

(h) * * *

(1) * * *

(iii) During all Class II and III work which is not performed using wet methods, provided, however, that respirators need not be worn during removal of ACM from sloped roofs when a negative exposure assessment has been made and the ACM is removed in an intact state.

* * * * *

207. On page 41087, in the first column above Table 1, in § 1915.1001, paragraph (h)(2)(i), line 5 is corrected by adding the words ''or in paragraph (h)(2)(iii) of this section,'' after the word ''Table 1,''.

208. On page 41087, in the third column above Table 1, in § 1915.1001, paragraph (h)(2)(iii)(A) is corrected to read:

* * * * *

(h) * * *

(2) * * *

(iii) * * *

(A) An employee chooses to use this type of respirator; and

* * * * *

209. On page 41087, in § 1915.1001, paragraph (h)(2), in Table 1, lines 1 through 3 under the heading ''Airborne concentration of asbestos or conditions of use'' are corrected to read ''Not in excess of 1 f/cc (10 X PEL), or otherwise as required independent of exposure pursuant to paragraph (h)(2)(iv) of this section.''.

210. On page 41087, in the first column below Table 1, in § 1915.1001, paragraph (h)(2)(v), line 5, the word ''auxiliar76y'' is corrected to read ''auxiliary''.

211. On page 41087, in the second column below Table 1, in § 1915.1001, paragraph (h)(3)(iv), line 10, the word ''employee'' is corrected to read ''employees''.

212. On page 41087, in the second column below Table 1, in § 1915.1001, paragraph (h)(3)(iv), line 12 is corrected by adding a comma after the word ''position''.

213. On page 41087, in § 1915.1001, paragraph (h)(4)(ii), line 2 of the third column below Table 1, the word ''of'' is corrected to read ''to''.

214. On page 41087, in § 1915.1001, paragraph (h)(4)(ii), line 6 of the third column below Table 1, the number ''(iii)'' is corrected to read ''(i)''.

215. On page 41087, in the third column below Table 1, in § 1915.1001, paragraph (i)(1), line 12, the word ''and'' is corrected to read ''or''.

216. On page 41088, in the first column, in § 1915.1001, paragraph (j)(1) introductory text, line 3 is corrected by adding the words ''involving over 25 linear or 10 square feet of TSI or surfacing ACM and PACM'' after the word ''jobs''.

217. On page 41088, in § 1915.1001, paragraph (j)(1)(i)(C), line 9 of the second column is corrected by removing the word ''Such'' and adding the words ''Following showering, such'' in its place.

218. On page 41088, in the third column, in § 1915.1001, paragraph (j)(2)(iii), line 1, the word ''Workclothing'' is corrected to read ''Work clothing''.

219. On page 41088, in the third column, in § 1915.1001, paragraph (k), line 2, the word ''Note:'' is removed and the text is correctly designated as paragraph (k)(1).

220. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), lines 15 and 16, the words ''are required to treat'' are corrected to read ''shall identify''.

221. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), line 19, the number ''(4)'' is corrected to read ''(5)''.

222. On page 41088, in the third column, in § 1915.1001, newly designated paragraph (k)(1), line 25, the words ''paragraph (g), of this section'' are corrected to read ''paragraph (g)(8)(i)(I) of this section,''.

223. On page 41089, 8 lines from the top of the first column, in § 1915.1001, paragraph (k)(1) is redesignated as paragraph (k)(2).

224. On page 41089, in the first column, in § 1915.1001, newly redesignated paragraph (k)(2)(i) is corrected to read:

* * * * *

(k) * * *

(2) * * *

(i) Before work subject to this standard is begun, building/vessel and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

* * * * *

225. On page 41089, 23 lines from the bottom of the first column, in § 1915.1001, paragraph (k)(2) is redesignated as paragraph (k)(3).

226. On page 41089, in the first column, in § 1915.1001, newly redesignated paragraph (k)(3)(i), line 5 is corrected by adding the words ''pursuant to paragraph (k)(1) of this section'' after the word ''therein''.

227. On page 41089, 15 lines from the top of the second column, in § 1915.1001, paragraph (k)(3) is redesignated as paragraph (k)(4).

228. On page 41089, 25 lines from the top of the second column, in § 1915.1001, paragraph (k)(4) is redesignated as paragraph (k)(5).

229. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(i), line 11, the number ''(4)'' is corrected to read ''(5)''.

230. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii) introductory text, line 3 is corrected by adding the words ''more than 1%'' after the word ''contain''.

231. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(A), line 5 is corrected by adding the word ''or'' after the word ''ACM;''.

232. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 3, the word ''asbestos'' is corrected to read ''ACM''.

233. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), lines 5 through 7 are corrected to read, ''analysis of bulk samples collected in the manner described in 40 CFR 763.86. The''.

234. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 17, the word ''of'' is corrected to read ''or''.

235. On page 41089, in the second column, in § 1915.1001, newly redesignated paragraph (k)(5)(ii)(B), line 19, the word ''of'' is corrected to read ''or''.

236. On page 41089, in the third column, in § 1915.1001, a new paragraph (k)(5)(iii) is added to read:

* * * * *

(k) * * *

(5) * * *

(iii) The employer and/or building/vessel owner may demonstrate that flooring material including associated mastic and backing does not contain asbestos, by a determination of an industrial hygienist based upon recognized analytical techniques showing that the material is not ACM.

* * * * *

237. On page 41089, 5 lines from the top of the third column, in § 1915.1001, paragraph (k)(5) is redesignated as paragraph (k)(6).

238. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(6), lines 4

and 5, the words ''TSI or surfacing ACM and PACM'' are corrected to read ''ACM and/or PACM''.

239. On page 41089, 15 lines from the top of the third column, in § 1915.1001, paragraph (k)(6) is redesignated as paragraph (k)(7).

240. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(7)(ii) is corrected to read:

* * * * *

(k) * * *

(7) * * *

(ii)(A) The warning signs required by paragraph (k)(7) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

* * * * *

241. On page 41089, in the third column, in § 1915.1001, a new paragraph (k)(7)(iii) is added to read:

* * * * *

(k) * * *

(7) * * *

(iii) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (k)(7)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

* * * * *

242. On page 41089, 32 lines from the bottom of the third column, in § 1915.1001, paragraph (k)(7) is redesignated as paragraph (k)(8).

243. On page 41089, in the third column, in § 1915.1001, newly redesignated paragraph (k)(8)(vi) introductory text, lines 2 and 3, the words ''paragraphs (k)(2)(i) through (k)(2)(iii)'' are corrected to read ''paragraphs (k)(8)(i) through (k)(8)(iii)''.

244. On page 41090, in the first column, in § 1915.1001, newly redesignated paragraph (k)(8)(vi)(B), lines 2 and 3 are corrected by removing the words ''by weight''.

245. On page 41090, in the first column, in § 1915.1001, newly redesignated paragraph (k)(8)(vii), line 12, the number ''(5)'' is corrected to read ''(6)''.

246. On page 41090, in the first column, in § 1915.1001, paragraph (k)(8) is redesignated as paragraph (k)(9) and is corrected to read:

* * * * *

(k) * * *

(9) *Employee Information and Training.* (i) The employer shall, at no cost to the employee, institute a training program for all employees who are likely to be exposed in excess of a PEL and for all employees who perform Class I through IV asbestos operations, and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(iii) Training for Class I operations shall be the equivalent in curriculum, training method and length to the EPA Model Accreditation Plan (MAP) asbestos abatement workers training (40 CFR part 763, subpart E, appendix C).

(iv) Training for Class II work. For work with asbestos containing material involving roofing materials, flooring materials, siding materials, ceiling tiles, or transite panels, training shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category. Such course shall include ''hands-on'' training and shall take at least 8 hours. Exception: For other Class II operations, training shall be provided which shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category, and shall include ''hands-on'' training.

(v) Training for Class III employees shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2). Such a course shall also include ''hands-on'' training and shall take at least 16 hours. Exception: For Class III operations for which the qualified person determines that the EPA curriculum does not adequately cover the training needed to perform that activity, training shall include as a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that activity, and shall include ''hands-on'' training.

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours.

(vii) Training for employees who are likely to be exposed in excess of the PEL and who are not otherwise required to be trained under paragraph (k)(9) (iii) through (vi) of this section, shall meet the requirements of paragraph (k)(9)(viii) of this section.

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9) (iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

(A) Methods of recognizing asbestos, including the requirement in paragraph (k)(1) of this section to presume that certain building materials contain asbestos;

(B) The health effects associated with asbestos exposure;

(C) The relationship between smoking and asbestos in producing lung cancer;

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures; where Class III and IV work will be or is performed, the contents of EPA 20T–2003, ''Managing Asbestos In-Place'' July 1990 or its equivalent in content;

(E) The purpose, proper use, fitting instructions, and limitations of respirators as required by 29 CFR 1910.134;

(F) The appropriate work practices for performing the asbestos job;

(G) Medical surveillance program requirements;

(H) The content of this standard including appendices;

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to this section, to comply with this requirement; and

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

* * * * *

247. On page 41090, 8 lines from the top of the third column, paragraph (k)(9) is redesignated as paragraph (k)(10).

248. On page 41090, in the third column, in § 1915.1001, newly redesignated paragraph (k)(10)(i), line 4 is corrected by adding a comma after the word ''cost''.

249. On page 41090, in the third column, in § 1915.1001, newly redesignated paragraph (k)(10)(iii), line 10 is corrected by adding the words ''to this section'' after the words ''Appendix J''.

250. On page 41090, in the third column, in § 1915.1001, paragraph (1) entitled ''Housekeeping'' is correctly designated as paragraph (l) entitled ''*Housekeeping*''.

251. On page 41090, in the third column, in § 1915.1001, paragraph (l)(2), line 7 is corrected by adding the words ''except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply'' after the word ''containers''.

252. On page 41090, in the third column, in § 1915.1001, paragraph (l)(3)(i), line 6, the words ''paragraph (g)'' are corrected to read ''paragraph (g)(8)(i)(I) of this section''.

253. On page 41090, in the third column, in § 1915.1001, the three paragraphs following the first paragraph (l)(3)(i) are redesignated as paragraphs (l)(3)(ii), (l)(3)(iii), and (l)(3)(iv), respectively.

254. On page 41090, in the third column, in § 1915.1001, in newly redesignated paragraph (l)(3)(iii), line 3, the word ''speed'' is corrected to read ''speeds''.

255. On page 41090, in the third column, in § 1915.1001, paragraph (l)(4) introductory text is corrected to read:

* * * * *

(l) * * *

(4) Waste and debris and accompanying dust in an area containing accessible thermal system insulation or surfacing ACM/PACM or visibly deteriorated ACM:

* * * * *

256. On page 41091, in the first column, in § 1915.1001, paragraph (l)(4)(ii), line 2 is corrected by adding the word ''of'' after the word ''disposed''.

257. On page 41091, in the first column, in § 1915.1001, paragraph (m)(1)(i), is corrected to read:

* * * * *

(m) * * *

(1) * * *

(i) *Employees covered.* (A) The employer shall institute a program for all employees who, for a combined total of 30 or more days per year, are engaged in Class I, II, or III work or are exposed at or above the permissible exposure limit for a combined 30 days or more per year. For purposes of this subparagraph, any day in which a worker engages in Class II or Class III work or a combination thereof for one hour or less and, while doing so, adheres fully to the work practices specified in this standard, shall not be counted.

(B) For employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are physically able to perform the work and use the equipment. This determination shall be made under the supervision of a physician.

* * * * *

258. On page 41091, in the first column, in § 1915.1001, paragraph (m)(1)(ii), line 1 is corrected by removing the words ''by a physician''.

259. On page 41091, in the first column, in § 1915.1001, paragraph (m)(2)(i)(B) is corrected to read:

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) When the employee is assigned to an area where exposure to asbestos may be at or above the permissible exposure limit for 30 or more days per year, or engage in Class I, II, or III work for a combined total of 30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure;

* * * * *

260. On page 41091, in the second column, in § 1915.1001, paragraph (m)(3)(i), line 2 is corrected by removing the letter ''G,''.

261. On page 41091, in the third column, in § 1915.1001, paragraph (n)(1)(i), line 3, the word ''demonstrate'' is corrected to read ''demonstrates''.

262. On page 41091, in the third column, in § 1915.1001, paragraph (n)(1)(i), line 4 is corrected by adding the words ''or the activity involving such products or material'' after the words ''containing asbestos''.

263. On page 41092, in the first column, in § 1915.1001, paragraph (n)(4), line 3, the number ''1'' is corrected by enclosing it in parenthesis to read ''(1)''.

264. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3) introductory text, lines 5 and 6, the words ''in paragraph (p)(3)(i) and (ii)'' are corrected to read ''in paragraph (o)(3)(i)''.

265. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3) introductory text, lines 9 and 10, the words ''Class II and III'' are corrected to read ''Class II, III, and IV''.

266. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i) introductory text, line 4, the words ''paragraph (g)(1)'' are corrected to read ''paragraph (e)(6)''.

267. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(E), line 3, the words ''protective clothing'' are corrected to read ''respirators''.

268. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(E), line 4, the word ''respirators'' is corrected to read ''protective clothing''.

269. On page 41092, in the second column, in § 1915.1001, paragraph (o)(3)(i)(F), line 2, the words ''set up'' are corrected to read ''set up, use,''.

270. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(H), line 1, the word ''though'' is corrected to read ''through''.

271. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(H), line 2 is corrected by adding a comma after the word ''inspection''.

272. On page 41092, in the third column, in § 1915.1001, paragraph (o)(3)(i)(I), line 2, the words ''paragraph (f)(6)'' are corrected to read ''paragraph (k)''.

273. On page 41092, in the third column, in § 1915.1001, paragraph (o)(4)(i), lines 12 through 16 are corrected to read ''that meets the criteria of EPA's Model Accredited Plan (40 CFR part 763) or a course equivalent in stringency, content, and length.''

274–276. On page 41092, in the second column, in § 1915.1001, paragraph (o)(4)(ii) is corrected to read:

* * * * *

(o) * * *

(4) * * *

(ii) For Class III and IV asbestos work, the qualified person shall be trained in aspects of asbestos handling appropriate for the nature of the work, to include procedures for setting up glove bags and mini-enclosures, practices for reducing asbestos exposures, use of wet methods,

the contents of this standard, and the identification of asbestos. Such training shall include successful completion of a course that is consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2), or its equivalent in stringency, content, and length. Qualified persons for Class III and Class IV work may also be trained pursuant to the requirements of paragraph (o)(4)(i) of this section.

* * * * *

Appendix A to § 1915.1001 [Corrected]

277. On page 41093, in the first column, the heading for Appendix A to § 1915.1001 is corrected to read:

Appendix A to § 1915.1001—OSHA Reference Method (Mandatory)''

* * * * *

278. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, lines 3 and 4 are corrected by removing the words ''tremolite, anthophyllite, and actinolite''.

279. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, line 11, the word ''ID–60'' is corrected to read ''ID–160''.

280. On page 41093, in the first column, in § 1915.1001, in Appendix A, in the introductory paragraph, line 12, the words ''NIOSH 7400 method'' are corrected to read ''NIOSH Method 7400''.

281. On page 41093, in the first column, in § 1915.1001, in Appendix A, under the heading entitled ''*Sampling and Analytical Procedure*,'' paragraph 1, line 5 is corrected by removing the words ''tremolite, anthophyllite, and actinolite''.

282. On page 41093, in § 1915.1001, in Appendix A, under the heading entitled ''*Sampling and Analytical Procedure*,'' paragraph 2, line 6 of the second column is corrected by adding a sentence ''Other cassettes such as the Bell-mouth may be used within the limits of their validation.'' after the word ''record.''.

283. On page 41093, in the second column, in § 1915.1001, in Appendix A, under the heading entitled ''*Sampling and Analytical Procedure*,'' paragraph 3, line 2, the number ''2.5'' is corrected to read ''5''.

284. On page 41093, in the second column, in § 1915.1001, in Appendix A, under the heading ''*Sampling and Analytical Procedure*,'' paragraph 3, line 5, the number ''2.5'' is corrected to read ''5''.

285. On page 41093, in the second to third column, in § 1915.1001, in Appendix A, under the heading entitled ''*Sampling and Analytical Procedure*,'' paragraph 11 is corrected to read:

* * * * *

11. Each set of samples taken will include 10% field blanks or a minimum of 2 field blanks. These blanks must come from the same lot as the filters used for sample collection. The field blank results shall be averaged and subtracted from the analytical results before reporting. A set consists of any sample or group of samples for which an evaluation for this standard must be made. Any samples represented by a field blank having a fiber count in excess of the detection limit of the method being used shall be rejected.

* * * * *

286. On page 41093, in the third column, in § 1915.1001, in Appendix A, under the heading entitled ''*Sampling and Analytical Procedure*,'' paragraph 13.b. is corrected to read:

* * * * *

13. * * *

b. In the absence of other information, count all particles as asbestos that have a length-to-width ratio (aspect ratio) of 3 to 1 or greater.

* * * * *

Appendix B to § 1915.1001 [Corrected]

287. On page 41094, in § 1915.1001, in Appendix B, the table is corrected so that the word ''Air'' is removed from between the double lines at the beginning and added following the word ''Matrix''.

288. On page 41094, in the first column below the table, in § 1915.1001, in Appendix B, under the heading entitled ''*1. Introduction*,'' in the definition of ''Asbestos,'' the chemical formula for Crocidolite is corrected to read ''$Na_2Fe_3^{2+}Fe_2^{3+}Si_8O_{22}(OH)_2$''.

289. On page 41094, in the second column below the table, in § 1915.1001, in Appendix B, in the definition of ''*Walton-Beckett Graticule*,'' line 11, the number ''2'' is corrected to read ''1''.

290. On page 41094, in the third column below the table, in § 1915.1001, in Appendix B, in the paragraph under the heading entitled ''1.2 Principle,'' line 6 is corrected by removing the word ''a''.

291. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled ''*4. Interferences*,'' in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

292. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled ''*5.1.1* Sample assembly,'' in the first paragraph, line 8, the number ''0.8–'' is corrected to read ''0.4''.

293. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled ''*5.1.1* Sample assembly,'' a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

294. On page 41095, in the second column, in § 1915.1001, in Appendix B, under the heading entitled ''*5.1.3* Sampling pump,'' lines 5 and 6, the words ''2.5 liters per minute (L/min)'' are corrected to read ''the collection rate''.

295. On page 41095, in the second column, in § 1915.1001, in Appendix B, in the paragraph entitled ''*5.2.1*,'' line 2 is corrected by removing the words ''(see Figure 3)''.

296. On page 41095, in the third column, in § 1915.1001, in Appendix B, under the heading entitled ''*5.2.5*,'' lines 8 through 10 of the ''Note'' are corrected to read, ''pressure changes, correct the flow rate using the formula shown in the section ''Sampling Pump Flow Rate Corrections'' at the end of this appendix.''

297. On page 41096, in the first column, in § 1915.1001, in Appendix B, the paragraph entitled ''*5.2.11*'' is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

298. On page 41096, in the first column, in § 1915.1001, in Appendix B, in the paragraph entitled ''*5.3.2*,'' line 8, the words ''without rattling'' are corrected to read ''in such a manner that they will not rattle''.

299. On page 41097, in the first column, in § 1915.1001, in Appendix B, under the heading entitled ''*6.6.2* Counting Fibers,'' paragraph (9), line 5, the number ''2'' is corrected to read ''1''.

300. On page 41097, in the third column, in § 1915.1001, in Appendix B, under the heading entitled ''7.3. Recount Calculations,'' the formula in the third paragraph is corrected to read:

* * * * *

7.3. Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times\left(\sqrt{AC_{AVG}}\right)\times CV_{FB}$$

* * * * *

301. On page 41098, in the second column, in § 1915.1001, in Appendix B, under the heading entitled ''*Quality Control,*'' in the first paragraph, lines 6 and 7 are corrected by removing the words ''for the CV curve shown below''.

302. On page 41098, in the third column, in § 1915.1001, in Appendix B, under the heading entitled ''*Walton-Beckett Graticule,*'' paragraph (7), line 12 is corrected to read ''Field Area = $\pi(D/2)^2$''.

Appendix E to § 1915.1001 [Corrected]

303. On page 41119, in the first column, in § 1915.1001, in Appendix E, paragraph (a) is corrected to read:

* * * * *

(a) Chest roentgenograms shall be interpreted and classified in accordance with a professionally accepted classification system and recorded on an interpretation form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

* * * * *

Appendix F to § 1915.1001 [Corrected]

304. On page 41121, in the first column, in § 1915.1001, in Appendix F, under the heading entitled ''*Cleaning the Work Area,*'' in the second paragraph, line 4, the word ''encapsulate'' is corrected to read ''encapsulant''.

Appendix H to § 1915.1001 [Corrected]

305. On page 41121, in § 1915.1001, in Appendix H, under the heading entitled ''*III. Respirators and Protective Clothing,*'' paragraph A, line 6 of the third column is corrected by adding the word ''a'' after the word ''conduct''.

306. On page 41121, in the third column, in § 1915.1001, in Appendix H, under the heading entitled ''*IV. Disposal Procedures and Clean-up,*'' paragraph E, line 1, the word ''if'' is corrected to read ''is''.

307. On page 41121, in the third column, in § 1915.1001, in Appendix H, under the heading entitled ''*V. Access to Information,*'' paragraph B, line 5, the word ''trowled-on'' is corrected to read ''troweled-on''.

Appendix K to § 1915.1001 [Corrected]

308. On page 41123, in the first column, in § 1915.1001, in Appendix K, line 3 of the title is corrected by removing a closed parenthesis after the word ''Non-Mandatory''.

309. On page 41125, in the first column, in § 1915.1001, in Appendix K, under the heading entitled ''1.8 Toxicology,'' line 9 is corrected by adding the words ''and 29 CFR 1915.1001'' after the number ''1926.1101''.

310. On page 41125, in the second column, in § 1915.1001, in Appendix K, under the heading entitled ''2.4 Shipment,'' paragraph (a), line 2 is corrected by removing the words ''(such as the OSHA 21)''.

311. On page 41129, in the first column, in § 1915.1001, in Appendix K, the heading entitled ''*Auxiliary Information*'' is correctly designated as ''*4. Auxiliary Information*''.

312. On page 41129, in the second column, in § 1915.1001, in Appendix K, the paragraph under the heading entitled ''4.3 Polarized Light Technique,'' beginning on line 10, is corrected by removing the sentence, ''A compensator is a piece of mineral with known properties that ''compensates'' for some deficiency in the optical train.''.

Appendix L to § 1915.1001 [Corrected]

313. On page 41131, in the first column, in § 1915.1001, Appendix L, in the introductory paragraph, line 7 is corrected by adding the words ''by trained employees'' after the word ''practices''.

314. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*'' paragraph (6), line 5, the words ''paragraph (j)(2)(ii)'' are corrected to read ''paragraph (k)(8)''.

315. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*'' paragraph (6), line 6, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

316. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[A] Negative Pressure Enclosure/HEPA Vacuum System Method,*'' paragraph (7), line 5, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

317. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[B] Low Pressure/Wet Cleaning Method,*'' paragraph (6), line 5, the words ''paragraph (j)(2)(ii)'' are corrected to read ''paragraph (k)(8)''.

318. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[B] Low Pressure/Wet Cleaning Method,*'' paragraph (6), line 7, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

319. On page 41131, in the second column, in § 1915.1001, in Appendix L, under the heading entitled ''*[B] Low Pressure/Wet Cleaning Method,*'' paragraph (7), line 5, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

320. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading entitled ''*[C] Equivalent Methods,*'' line 12, the number ''0.004'' is corrected to read ''0.016''.

321. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading ''*[D] Wet Methods,*'' paragraph (2), line 3, the words ''paragraph (j)(2)(ii)'' are corrected to read ''paragraph (k)(8)''.

322. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading ''*[D] Wet Method,*'' paragraph (2), line 4, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

323. On page 41131, in the third column, in § 1915.1001, in Appendix L, under the heading ''*[D] Wet Method,*'' paragraph (3), line 3, the words ''paragraph (k)'' are corrected to read ''paragraph (l)''.

§ 1926.1101 [Corrected]

324. On page 41132, in § 1926.1101, paragraph (b), the definition of ''*Certified Industrial Hygienist (CIH),*'' the first line of the second column is corrected by removing the word ''comprehensive''.

325. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of ''*Class III asbestos work*'' is corrected to read:

* * * * *

(b) * * *

Class III asbestos work means repair and maintenance operations, where ''ACM,'' including TSI and surfacing ACM and PACM, may be disturbed.

* * * * *

326. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of ''*Class IV asbestos work*'' is corrected to read:

* * * * *

(b) * * *

Class IV asbestos work means maintenance and custodial activities during which employees contact but do not disturb ACM or PACM and activities to clean up dust, waste and debris resulting from Class I, II, and III activities.

* * * * *

327. On page 41132, in the second column, in § 1926.1101, paragraph (b), the definition of ''*Competent Person,*'' lines 12 through 19 are corrected to read ''course which meets the criteria of EPA's Model Accreditation Plan (40 CFR part 763) for supervisor, or its equivalent and, for Class III and Class IV work, who is trained in a manner consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92 (a)(2).''.

328. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of ''*Disturbance,*'' the first sentence is corrected to read:

* * * * *

(b) * * *

Disturbance means activities that disrupt the matrix of ACM or PACM, crumble or pulverize ACM or PACM, or generate visible debris from ACM or PACM.* * *

* * * * *

329. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of ''*Glovebag,*'' line 1, the word ''an'' is corrected to read ''not more than a 60 × 60 inch''.

330. On page 41132, in the third column, in § 1926.1101, paragraph (b), the definition of ''*Intact,*'' line 3, the word ''it'' is corrected to read ''the asbestos''.

331. On page 41133, in § 1926.1101, paragraph (b), in the definition of ''*Modification,*'' line 8 from the top of the first column is corrected by removing the number ''(ii)''.

332. On page 41133, in the first column, in § 1926.1101, paragraph (b), the definition of ''*Presumed Asbestos Containing Material,*'' line 7, the number ''(4)'' is corrected to read ''(5)''.

333. On page 41133, in the first column, in § 1926.1101, paragraph (b), the definition of ''*Regulated area,*'' line 12 is corrected by removing the number ''(6)''.

334. On page 41133, in the second column, in § 1926.1101, paragraph (c)(1), line 8 the word ''of'' is corrected to read ''to''.

335. On page 41133, in the second column, in § 1926.1101, paragraph (c)(2), line 8, the word ''of'' is corrected to read ''to''.

336. On page 41133, in the second column, in § 1926.1101, paragraph (d)(3), line 13 is corrected by removing the number ''(1)''.

337. On page 41133, in the third column, in § 1926.1101, paragraph (e)(2), line 6 is corrected by removing the words ''concentrations of''.

338. On page 41133, in the third column, in § 1926.1101, paragraph (e)(2), line 12, the number ''(6)'' is corrected to read ''(7)''.

339. On page 41133, in the third column, in § 1926.1101, paragraph (e)(4), line 3, the number ''(2)'' is corrected to read ''(1)''.

340. On page 41133, in the third column, in § 1926.1101, paragraph (f)(1)(i), line 2, the word ''of'' is corrected to read ''or''.

340a. On page 41133, in the first column, in § 1926.1101, paragraph (f)(2)(i), the undesignated paragraph beginning on line 10 is correctly moved to line 9 as the second sentence of paragraph (f)(2)(i).

341–344. On page 41134, in the first column, in § 1926.1101, paragraph (f)(2)(ii) is corrected to read:

* * * * *

(f) * * *

(2) * * *

(ii) Basis of Initial Exposure Assessment: Unless a negative exposure assessment has been made pursuant to paragraph (f)(2)(iii) of this section, the initial exposure assessment shall, if feasible, be based on monitoring conducted pursuant to paragraph (f)(1)(iii) of this section. The assessment shall take into consideration both the monitoring results and all observations, information or calculations which indicate employee exposure to asbestos, including any previous monitoring conducted in the workplace, or of the operations of the employer which indicate the levels of airborne asbestos likely to be encountered on the job. For Class I asbestos work, until the employer conducts exposure monitoring and documents that employees on that job will not be exposed in excess of the PELs, or otherwise makes a negative exposure assessment pursuant to paragraph (f)(2)(iii) of this section, the employer shall presume that employees are exposed in excess of the TWA and excursion limit.

(iii) * * *

* * * * *

345. On page 41134, in the third column, in § 1926.1101, paragraph (f)(3)(iii), line 4 is corrected to read, ''operated in the pressure demand mode, or other positive pressure mode respirator,''.

346. On page 41134, in the third column, in § 1926.1101, paragraph (f)(4), line 1 is corrected to read, ''(4) *Termination of monitoring.* (i) If''.

347. On page 41134, in the third column, in § 1926.1101, paragraph (f)(4)(i), line 5, the word ''measurement'' is corrected to read ''measurements''.

348. On page 41134, in the third column, in § 1926.1101, paragraph (f)(5) is redesignated as paragraph (f)(6) and a new paragraph (f)(5) is added to read:

* * * * *

(f) * * *

(5) *Employee notification of monitoring results.*

(i) The employer shall notify affected employees of the monitoring results that represent that employee's exposure as soon as possible following receipt of monitoring results.

(ii) The employer shall notify affected employees of the results of monitoring representing the employee's exposure in writing either individually or by posting at a centrally located place that is accessible to affected employees.

* * * * *

349. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(i) is corrected to read:

* * * * *

(g) * * *

(1) * * *

(i) Vacuum cleaners equipped with HEPA filters to collect all debris and dust containing ACM and PACM, except as provided in paragraph (g)(8)(ii) of this section in the case of roofing material.

* * * * *

350. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(ii), lines 9 and 10, the words ''slipping hazards;'' are corrected to read ''except as provided in paragraph (g)(8)(ii) of this section;''.

351. On page 41135, in the first column, in § 1926.1101, paragraph (g)(1)(iii), line 3 is corrected by adding the words ''except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply'' after the word ''containers''.

352. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(A) is corrected to read:

* * * * *

(g) * * *

(4) * * *

(ii) * * *

(A) Critical barriers shall be placed over all the openings to the regulated area, except where activities are performed outdoors; or

* * * * *

353. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(B), line 13 is corrected by adding the words ''Phase Contrast Microscopy'' before the word ''(PCM)''.

354. On page 41135, in the second column, in § 1926.1101, paragraph (g)(4)(ii)(B) is corrected by adding the following sentence to the end of the paragraph, ''Exception: For work completed outdoors where employees are not working in areas adjacent to the regulated areas, this paragraph (g)(4)(ii) is satisfied when the specific control methods in paragraph (g)(5) of this section are used.''

355. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(i) introductory text, line 2, the word ''shall'' is corrected to read ''may''.

356. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii) introductory text is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) Glove bag systems may be used to remove PACM and/or ACM from straight runs of piping and elbows and other connections with the following specifications and work practices:

* * * * *

357. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii)(A)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(ii) * * *

(A) * * *

(*2*) Glovebags used on elbows and other connections must be designed for that purpose and used without modifications.

* * * * *

358. On page 41135, in the third column, in § 1926.1101, paragraph (g)(5)(ii)(B)(*4*), line 3, the number ''150°'' is corrected to read ''150°F''.

359. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(ii)(B)(*9*), line 2, the word ''removals'' is corrected to read ''removal operations''.

360. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii) introductory text, line 3, the word ''shall'' is corrected to read ''may''.

361. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*1*), line 2 is corrected by adding the word ''for'' after the word ''practices''.

362. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*1*), line 4, the number ''(*2*)'' is corrected to read ''(*4*)''.

363. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iii)(B)(*2*), line 4 is corrected by adding the words ''until it is completed at which time the bag shall be collapsed prior to removal of the bag from the pipe'' after the word ''operation''.

364. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iv) introductory text, line 3, the word ''shall'' is corrected to read ''may''.

365. On page 41136, in the first column, in § 1926.1101, paragraph (g)(5)(iv)(A)(*2*), line 2 is corrected by adding the word ''the'' after the word ''in''.

366. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(iv)(B)(*2*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(iv) * * *

(B) * * *

(*2*) The box shall be smoke-tested for leaks and any leaks sealed prior to each use.

* * * * *

367. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(vi)(B)(*1*) is corrected to read:

* * * * *

(g) * * *

(5) * * *

(vi) * * *

(B) * * *

(*1*) Before use, the mini-enclosure shall be inspected for leaks and smoke-tested to detect breaches, and any breaches sealed.

* * * * *

368. On page 41136, in the second column, in § 1926.1101, paragraph (g)(5)(vi)(B)(*3*), line 1 is corrected by adding a comma after the word ''use''.

369–370. On page 41136, in § 1926.1101, paragraph (g)(5)(vi)(B)(*3*), line 2 of the third column, the word ''minienclosure'' is corrected to read ''mini-enclosure''.

371. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(ii), line 19, the words ''paragraph (g)(4)(i)(B)(*2*)'' are corrected to read ''paragraph (g)(4)(ii)(B)''.

372. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(iii), line 6 is corrected by adding the words ''of this section'' after the words ''paragraph (g)(6)''.

373. On page 41136, in the third column, in § 1926.1101, paragraph (g)(6)(iii) is corrected by adding a sentence to the end of the paragraph to read, ''The submission shall not constitute approval by OSHA.''.

374. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(i), line 1 is corrected by removing the comma after the word ''work''.

375. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii) introductory text, line 4, the number ''(4)'' is corrected to read ''(2)''.

376. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii) introductory text, line 5 is corrected by adding a comma after the word ''job''.

377. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(ii)(B), line 8, the words ''paragraph (g)(4)(i)(B)(2)'' are corrected to read ''paragraph (g)(4)(ii)(B)''.

378. On page 41137, in the first column, in § 1926.1101, paragraph (g)(7)(iv), line 4, the words ''(g)(3)(i) through (v)'' are corrected to read ''(g)(1)(i) through (g)(1)(iii)''.

379. On page 41137, in the first column, in § 1926.1101, paragraph (g)(8)(i) introductory text, line 11, the word ''(k)(8)'' is corrected to read ''(k)(9) of this section''.

380. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(i)(F), line 4, the number ''(iv)'' is corrected to read ''(i)''.

381. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(B) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(B) Wet methods shall be used to remove roofing materials that are not intact, or that will be rendered not intact during removal, unless such wet methods are not feasible or will create safety hazards.

* * * * *

382. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(D) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(D) When removing built-up roofs with asbestos-containing roofing felts and an aggregate surface using a power roof cutter, all dust resulting from the cutting operation shall be collected by a HEPA dust collector, or shall be HEPA vacuumed by vacuuming along the cut line. When removing built-up roofs with asbestos-containing roofing felts and a smooth surface using a power roof cutter, the dust resulting from the cutting operation shall be collected either by a HEPA dust collector or HEPA vacuuming along the cut line, or by gently sweeping and then carefully and completely wiping up the still-wet dust and debris left along the cut line.

The dust and debris shall be immediately bagged or placed in covered containers.

* * * * *

383. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(ii)(E) is corrected to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(E) Asbestos-containing material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist:

(*1*) Any ACM that is not intact shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift. While the material remains on the roof it shall either be kept wet, placed in an impermeable waste bag, or wrapped in plastic sheeting.

(*2*) Intact ACM shall be lowered to the ground as soon as is practicable, but in any event no later than the end of the work shift.

* * * * *

384. On page 41137, in the second column, in § 1926.1101, a new paragraph (g)(8)(ii)(H) is added to read:

* * * * *

(g) * * *

(8) * * *

(ii) * * *

(H) Notwithstanding any other provision of this section, removal or repair of sections of intact roofing less than 25 square feet in area does not require use of wet methods or HEPA vacuuming as long as manual methods which do not render the material non-intact are used to remove the material and no visible dust is created by the removal method used. In determining whether a job involves less than 25 square feet, the employer shall include all removal and repair work performed on the same roof on the same day.

* * * * *

385. On page 41137, in the second column, in § 1926.1101, paragraph (g)(8)(iii) introductory text is corrected to read:

* * * * *

(g) * * *

(8) * * *

(iii) When removing cementitious asbestos-containing siding and shingles or transite panels containing ACM on building exteriors (other than roofs, where paragraph (g)(8)(ii) of this section applies) the employer shall ensure that the following work practices are followed:

* * * * *

386. On page 41137, in the third column, in § 1926.1101, paragraph (g)(8)(v)(A), line 2 is corrected by adding the word ''to'' after the word ''prior''.

387. On page 41138, in the first column, in § 1926.1101, paragraph (g)(9)(iii), line 9 is corrected by adding the words ''or another isolation method'' after the word ''section''.

388. On page 41138, in the first column, in § 1926.1101, paragraph (g)(10) introductory text, line 5, the number ''(8)'' is corrected to read ''(9)''.

389. On page 41138, in the second column, in § 1926.1101, a new paragraph (g)(11) is added to read:

* * * * *

(g) * * *

(11) Alternative methods of compliance for installation, removal, repair, and maintenance of certain roofing materials. Notwithstanding any other provision of this section, an employer who complies with all provisions of this paragraph (g)(11) when installing, removing, repairing, or maintaining intact roof cements, mastics, coatings, or flashings which contain asbestos fibers encapsulated or coated by bituminous or resinous compounds shall be deemed to be in compliance with this section. If an employer does not comply with all provisions of this paragraph (g)(11), or if during the course of the job the material does not remain intact, the provisions of paragraph (g)(8) of this section apply instead of this paragraph (g)(11).

(i) Before work begins and as needed during the job, a competent person who is capable of identifying asbestos hazards in the workplace and selecting the appropriate control strategy for asbestos exposure, and who has the authority to take prompt corrective measures to eliminate such hazards, shall conduct an inspection of the worksite and determine that the roofing material is intact and will likely remain intact.

(ii) All employees performing work covered by this paragraph (g)(11) shall be trained in a training program that meets the requirements of paragraph (k)(9)(viii) of this section.

(iii) The material shall not be sanded, abraded, or ground. Manual methods which do not render the material non-intact shall be used.

(iv) Material that has been removed from a roof shall not be dropped or thrown to the ground. Unless the material is carried or passed to the ground by hand, it shall be lowered to the ground via covered, dust-tight chute, crane or hoist. All such material shall be removed from the roof as soon as is practicable, but in any event no later than the end of the work shift.

(v) Where roofing products which have been labeled as containing asbestos pursuant to paragraph (k)(8) of this section are installed on non-residential roofs during operations covered by this paragraph (g)(11), the employer shall notify the building owner of the presence and location of such materials no later than the end of the job.

* * * * *

390. On page 41138, in the second column, in § 1926.1101, paragraph (h)(1)(iii) is corrected to read:

* * * * *

(h) * * *

(1) * * *

(iii) During all Class II and III work which is not performed using wet methods, provided, however, that respirators need not be worn during removal of ACM from sloped roofs when a negative exposure assessment has been made and the ACM is removed in an intact state.

* * * * *

391. On page 41138, in the second column, in § 1926.1101, paragraph (h)(2)(i), line 5 is corrected by adding the word ''or'' after the word ''Table 1''.

392. On page 41138, in the third column, in § 1926.1101, paragraph (h)(2)(iii), Table 1, lines 5 and 6 under the heading ''Airborne concentration of asbestos or conditions of use'' are corrected to read, ''of exposure pursuant to paragraph (h)(2)(iv) of this section.''.

393. On page 41139, in the first column, in § 1926.1101, paragraph (h)(3)(iv), line 10, the word ''employee'' is corrected to read ''employees''.

394. On page 41139, in the first column, in § 1926.1101, paragraph (h)(3)(iv), line 12 is corrected by adding a comma after the word ''position''.

395. On page 41139, in the first column, in § 1926.1101, paragraph (h)(4)(ii), line 15 is corrected by adding the words ''to this section'' after the words ''Appendix C''.

396. On page 41139, in the first column, in § 1926.1101, paragraph (h)(4)(ii), line 19, the number ''(iii)'' is corrected to read ''(i)''.

397. On page 41139, in § 1926.1101, paragraph (i)(1), line 1 of the second column, the word ''and'' is corrected to read ''or''.

398. On page 41139, in the second column, in § 1926.1101, paragraph (j)(1) introductory text, line 4, the word ''Tsi'' is corrected to read ''TSI''.

399. On page 41139, in the second column, in § 1926.1101, paragraph

(j)(1)(i)(B) introductory text, the undesignated paragraph beginning on line 10 is correctly moved to line 9 as the third sentence of paragraph (j)(1)(i)(B) introductory text.

400. On page 41139, in the third column, paragraph (j)(1)(i)(C), line 14, the word ''Such'' is corrected to read ''Following showering, such''.

401. On page 41140, in the first column, in § 1926.1101, paragraph (j)(2)(iii), line 1, the word ''Workclothing'' is corrected to read ''Work clothing''.

402. On page 41140, in the first column, in § 1926.1101, paragraph (k), line 1, the word ''Note:'' is removed and the text beginning on line 2 is correctly designated as paragraph (k)(1).

403. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), lines 4 and 5 of the second column, the words ''are required to treat'' are corrected to read ''shall identify''.

404. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), line 9 of the second column, the number ''(4)'' is corrected to read ''(5)''.

405. On page 41140, in § 1926.1101, newly designated paragraph (k)(1), line 15 of the second column, the words ''paragraph (g)'' are corrected to read ''paragraph (g)(8)(i)(I)''.

406. On page 41140, 30 lines from the top of the second column, in § 1926.1101, paragraph (k)(1) is redesignated as paragraph (k)(2).

407. On page 41140, in the second column, in § 1926.1101, newly redesignated paragraph (k)(2)(i) is corrected to read:

* * * * *

(k) * * *

(2) * * *

(i) Before work subject to this standard is begun, building and facility owners shall determine the presence, location, and quantity of ACM and/or PACM at the work site pursuant to paragraph (k)(1) of this section.

* * * * *

408. On page 41140, 2 lines from the bottom of the second column, in § 1926.1101, paragraph (k)(2) is redesignated as paragraph (k)(3).

409. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(3)(i), line 5 is corrected by adding the words ''pursuant to paragraph (k)(1) of this section'' after the word ''therein''.

410. On page 41140, 35 lines from the top of the third column, in § 1926.1101, paragraph (k)(3) is redesignated as paragraph (k)(4).

411. On page 41140, 25 lines from the bottom of the third column, in § 1926.1101, paragraph (k)(4) is redesignated as paragraph (k)(5).

412. On page 41140, in the third column, newly redesignated paragraph (k)(5)(i), line 10, the number ''(4)'' is corrected to read ''(5)''.

413. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii) introductory text, line 3 is corrected by adding the words ''more than 1%'' after the word ''contain''.

414. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(A), line 1, the word ''an'' is corrected to read ''a''.

415. On page 41140, in the third column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(A), line 5 is corrected by adding the word ''or'' after the word ''ACM;''.

416. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 3, the word ''asbestos'' is corrected to read ''ACM''.

417. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), lines 5 through 7 are corrected to read, ''analysis of bulk samples collected in the manner described in 40 CFR 763.86. The''.

418. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 17, the word ''of'' is corrected to read ''or''.

419. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(5)(ii)(B), line 19, the word ''of'' is corrected to read ''or''.

420. On page 41141, in the first column, in § 1926.1101, a new paragraph (k)(5)(iii) is added to read:

* * * * *

(k) * * *

(5) * * *

(iii) The employer and/or building owner may demonstrate that flooring material including associated mastic and backing does not contain asbestos, by a determination of an industrial hygienist based upon recognized analytical techniques showing that the material is not ACM.

* * * * *

421. On page 41141, 24 lines from the top of the first column, in § 1926.1101, paragraph (k)(5) is redesignated as paragraph (k)(6).

422. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(6), lines 4 and 5, the words ''thermal system insulation and surfacing ACM/PACM'' are corrected to read ''ACM and/or PACM''.

423. On page 41141, 35 lines from the top of the first column, in § 1926.1101, paragraph (k)(6) is redesignated as paragraph (k)(7).

424. On page 41141, in the first column, in § 1926.1101, newly redesignated paragraph (k)(7)(ii) is corrected to read:

* * * * *

(k) * * *

(7) * * *

(ii) (A) The warning signs required by paragraph (k)(7) of this section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(B) In addition, where the use of respirators and protective clothing is required in the regulated area under this section, the warning signs shall include the following:

RESPIRATORS AND PROTECTIVE CLOTHING ARE REQUIRED IN THIS AREA

* * * * *

425. On page 41141, in the first column, in § 1926.1101, a new paragraph (k)(7)(iii) is added to read:

* * * * *

(k) * * *

(7) * * *

(iii) The employer shall ensure that employees working in and contiguous to regulated areas comprehend the warning signs required to be posted by paragraph (k)(7)(i) of this section. Means to ensure employee comprehension may include the use of foreign languages, pictographs and graphics.

* * * * *

426. On page 41141, 12 lines from the bottom of the first column, in § 1926.1101, paragraph (k)(7) is redesignated as paragraph (k)(8).

427. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vi) introductory text, line 2, the words ''paragraphs (k)(2)(i) through (k)(2)(iii)'' are corrected to read ''paragraphs (k)(8)(i) through (k)(8)(iii) of this section''.

428. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vi)(B), lines 2 and 3 are corrected by removing the words ''by weight''.

429. On page 41141, in the second column, in § 1926.1101, newly redesignated paragraph (k)(8)(vii), line 12, the number ''(5)'' is corrected to read ''(6)''.

430. On page 41141, 26 lines from the bottom of the second column, in § 1926.1101, paragraph (k)(8) is redesignated as paragraph (k)(9) and is corrected to read:

* * * * *

(k) * * *

(9) *Employee Information and Training.* (i) The employer shall, at no cost to the employee, institute a training program for all employees who are likely to be exposed in excess of a PEL and for all employees who perform Class I through IV asbestos operations, and shall ensure their participation in the program.

(ii) Training shall be provided prior to or at the time of initial assignment and at least annually thereafter.

(iii) Training for Class I operations shall be the equivalent in curriculum, training method and length to the EPA Model Accreditation Plan (MAP) asbestos abatement workers training (40 CFR part 763, subpart E, appendix C).

(iv) Training for Class II work. For work with asbestos containing material involving roofing materials, flooring materials, siding materials, ceiling tiles, or transite panels, training shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category. Such course shall include ''hands-on'' training and shall take at least 8 hours. Exception: For other Class II operations, training shall be provided which shall include at a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that category, and shall include ''hands-on'' training.

(v) Training for Class III employees shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2). Such a course shall also include ''hands-on'' training and shall take at least 16 hours. Exception: For Class III operations for which the competent person determines that the EPA curriculum does not adequately cover the training needed to perform that activity, training shall include as a minimum all the elements included in paragraph (k)(9)(viii) of this section and in addition, the specific work practices and engineering controls set forth in paragraph (g) of this section which specifically relate to that activity, and shall include ''hands-on'' training.

(vi) Training for employees performing Class IV operations shall be consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(1). Such a course shall include available information concerning the locations of thermal system insulation and surfacing ACM/PACM, and asbestos-containing flooring material, or flooring material where the absence of asbestos has not yet been certified; and instruction in recognition of damage, deterioration, and delamination of asbestos containing building materials. Such course shall take at least 2 hours.

(vii) Training for employees who are likely to be exposed in excess of the PEL and who are not otherwise required to be trained under paragraph (k)(9)(iii) through (vi) of this section, shall meet the requirements of paragraph (k)(9)(viii) of this section.

(viii) The training program shall be conducted in a manner that the employee is able to understand. In addition to the content required by provisions in paragraphs (k)(9)(iii) through (vi) of this section, the employer shall ensure that each such employee is informed of the following:

(A) Methods of recognizing asbestos, including the requirement in paragraph (k)(1) of this section to presume that certain building materials contain asbestos;

(B) The health effects associated with asbestos exposure;

(C) The relationship between smoking and asbestos in producing lung cancer;

(D) The nature of operations that could result in exposure to asbestos, the importance of necessary protective controls to minimize exposure including, as applicable, engineering controls, work practices, respirators, housekeeping procedures, hygiene facilities, protective clothing, decontamination procedures, emergency procedures, and waste disposal procedures, and any necessary instruction in the use of these controls and procedures; where Class III and IV work will be or is performed, the contents of EPA 20T–2003, ''Managing Asbestos In-Place'' July 1990 or its equivalent in content;

(E) The purpose, proper use, fitting instructions, and limitations of respirators as required by 29 CFR 1910.134;

(F) The appropriate work practices for performing the asbestos job;

(G) Medical surveillance program requirements;

(H) The content of this standard including appendices;

(I) The names, addresses and phone numbers of public health organizations which provide information, materials and/or conduct programs concerning smoking cessation. The employer may distribute the list of such organizations contained in Appendix J to this section, to comply with this requirement; and

(J) The requirements for posting signs and affixing labels and the meaning of the required legends for such signs and labels.

* * * * *

431. On page 41142, in the first column, in § 1926.1101, paragraph (k)(9) is redesignated as paragraph (k)(10).

432. On page 41142, in the first column, in § 1926.1101, paragraph (l)(2), line 7 is corrected by adding ''except in roofing operations, where the procedures specified in paragraph (g)(8)(ii) of this section apply'' after the word ''containers''.

433. On page 41142, in § 1926.1101, paragraph (l)(3)(i), line 1 of the second column, the words ''paragraph (g)'' are corrected to read ''paragraph (g)(8)(i)(I)''.

434. On page 41142, in the second column, in § 1926.1101, the three paragraphs following the first paragraph (l)(3)(i) are redesignated as paragraphs (l)(3)(ii), (l)(3)(iii), and (l)(3)(iv), respectively.

435. On page 41142, in the second column, in newly redesignated paragraph (l)(3)(iii), line 3, the word ''speed'' is corrected to read, ''speeds''.

436. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4) introductory text is corrected to read:

* * * * *

(l) * * *

(4) Waste and debris and accompanying dust in an area containing accessible thermal system insulation or surfacing ACM/PACM or visibly deteriorated ACM:

* * * * *

437. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4)(ii), line 1, the word ''clean'' is corrected to read ''cleaned''.

438. On page 41142, in the second column, in § 1926.1101, paragraph (l)(4)(ii), line 2 is corrected by adding the word ''of'' after the word ''disposed''.

439. On page 41142, in the second column, in § 1926.1101, paragraph (m)(1)(i) is corrected to read:

* * * * *

(m) * * *

(1) * * *

(i) *Employees covered.* (A) The employer shall institute a program for all employees who, for a combined total of 30 or more days per year, are engaged in Class I, II, or III work or are exposed

at or above the permissible exposure limit for a combined 30 days or more per year. For purposes of this subparagraph, any day in which a worker engages in Class II or Class III work or a combination thereof for one hour or less and, while doing so, adheres fully to the work practices specified in this standard, shall not be counted.

(B) For employees otherwise required by this standard to wear a negative pressure respirator, employers shall ensure employees are physically able to perform the work and use the equipment. This determination shall be made under the supervision of a physician.

* * * * *

440. On page 41142, in the second column, in § 1926.1101, paragraph (m)(1)(ii) heading, line 1 is corrected by removing the words ''by a physician''.

441. On page 41142, in the second column, in § 1926.1101, paragraph (m)(2)(i)(B) is corrected to read:

* * * * *

(m) * * *

(2) * * *

(i) * * *

(B) When the employee is assigned to an area where exposure to asbestos may be at or above the permissible exposure limit for 30 or more days per year, or engage in Class I, II, or III work for a combined total of 30 or more days per year, a medical examination must be given within 10 working days following the thirtieth day of exposure;

* * * * *

442. On page 41142, in the third column, in § 1926.1101, paragraph (m)(3)(i), line 2 is corrected by removing the letter ''G,''.

443. On page 41143, in the first column, in § 1926.1101, paragraph (n)(1)(i), line 3, the word ''demonstrate'' is corrected to read ''demonstrates''.

444. On page 41143, in the first column, in § 1926.1101, paragraph (n)(1)(i), line 4 is corrected by adding the words ''or the activity involving such products or material'' after the words ''containing asbestos''.

445. On page 41143, in the second column, in § 1926.1101, paragraph (n)(4), line 3, the number ''1'' is corrected by enclosing it in parenthesis to read ''(1)''.

446. On page 41143, in the second column, in § 1926.1101, paragraph (n)(5), line 5, the word ''far'' is corrected to read ''for''.

447. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3) introductory text, line 6, the words ''(p)(3) (i) and (ii)'' are corrected to read ''(o)(3)(i)''.

448. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3) introductory text, line 10, the words ''Class II and III'' are corrected to read ''Class II, III, and IV''.

449. On page 41143, in the third column, in § 1926.1101, paragraph (o)(3)(i) introductory text, line 4, the words ''paragraph (g)(1)'' are corrected to read ''paragraph (e)(6)''.

450. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(E), line 3, the words ''protective clothing'' are corrected to read ''respirators''.

451. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(E), line 4, the word ''respirators'' is corrected to read ''protective clothing''.

452. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(F), line 2, the words ''set up'' are corrected to read ''set up, use,''.

453. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(H), line 1, the word ''though'' is corrected to read ''through''.

454. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(H), line 2 is corrected by adding a comma after the word ''inspection''.

455. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(i)(I), line 2, the words ''paragraph (f)(6)'' are corrected to read ''paragraph (k)''.

456. On page 41144, in the first column, in § 1926.1101, paragraph (o)(3)(ii) is added and reserved.

457. On page 41144, in the first column, in § 1926.1101, paragraph (o)(4)(i), lines 12 through 16 are corrected to read, ''that meets the criteria of EPA's Model Accredited Plan (40 CFR part 763) or a course equivalent in stringency, content, and length.''.

458. On page 41144, in the first to second column, in § 1926.1101, paragraph (o)(4)(ii), lines 11 through 17 are corrected to read, ''course that is consistent with EPA requirements for training of local education agency maintenance and custodial staff as set forth at 40 CFR 763.92(a)(2), or its equivalent in stringency, content, and length.''.

Appendix B to § 1926.1101 [Corrected]

458a. On page 41144, in the third column, the heading for Appendix B to § 1926.1101 is corrected to read:

Appendix B to § 1926.1101—Sampling and Analysis (Non-Mandatory)

* * * * *

459. On page 41145, in § 1926.1101, in Appendix B, the table is corrected so that the word ''Air'' is removed from between the double lines at the beginning and added following the word ''Matrix''.

460. On page 41145, in the second column, in § 1926.1101, in Appendix B, under ''*1. Introduction,*'' in the definition of ''*Walton-Beckett Graticule,*'' line 11, the number ''2'' is corrected to read ''1''.

461. On page 41145, in the second column, in § 1926.1101, in Appendix B, in the paragraph under the heading entitled ''1.2 Principle,'' line 6 is corrected by removing the word ''a''.

462. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled ''*4. Interferences,*'' in the second paragraph, the list of common fibers is corrected to read:

* * * * *

4. Interferences

* * * * *

fiberglass
anhydrite
plant fibers
perlite veins
gypsum
some synthetic fibers
membrane structures
sponge spicules
diatoms
microorganisms
wollastonite

* * * * *

463. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled ''*5.1.1* Sample assembly,'' in the first paragraph, line 8, the number ''0.8-'' is corrected to read ''0.4''.

464. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled ''*5.1.1* Sample assembly,'' a new note (e) is added to read:

* * * * *

5.1.1 * * *

Notes: * * *

(e) Other cassettes, such as the Bell-mouth, may be used within the limits of their validation.

* * * * *

465. On page 41146, in the second column, in § 1926.1101, in Appendix B, under the heading entitled ''*5.1.3* Sampling pump,'' lines 5 and 6, the words ''2.5 liters per minute (L/min)'' are corrected to read ''the collection rate''.

466. On page 41146, in the second column, in § 1926.1101, in Appendix B, in the paragraph entitled ''*5.2.1,*'' line 2 is corrected by removing the words ''(see Figure 3)''.

467. On page 41146, in the third column, in § 1926.1101, in Appendix B, under the heading entitled ''*5.2.5,*'' lines 8 and 9 of the ''Note'' are corrected to

read, ''pressure changes, correct the flow rate using the formula shown in the section ''Sampling Pump Flow Rate Corrections'' at the end of this appendix.''.

468. On page 41147, in the first column, in § 1926.1101, in Appendix B, the paragraph entitled ''*5.2.11*'' is corrected to read:

* * * * *

5. * * *

5.2 * * *

5.2.11 Attach and secure a sample seal around each sample cassette in such a way as to assure that the end cap and base plugs cannot be removed without destroying the seal. Tape the ends of the seal together since the seal is not long enough to be wrapped end-to-end. Also wrap tape around the cassette at each joint to keep the seal secure.

* * * * *

469. On page 41147, in the first column, in § 1926.1101, in Appendix B, in the paragraph entitled ''*5.3.2,*'' line 8, the words ''without rattling'' are corrected to read ''in such a manner that they will not rattle''.

470. On page 41148, in the first column, in § 1926.1101, in Appendix B, under the heading entitled ''*6.6.2* Counting Fibers,'' paragraph (9), line 5, the number ''2'' is corrected to read ''1''.

471. On page 41148, in the third column, in § 1926.1101, in Appendix B, under the heading entitled ''7.3. Recount Calculations,'' the formula in the third paragraph is corrected to read:

* * * * *

7.3. Recount Calculations

* * * * *

$$\left|\sqrt{AC_2}-\sqrt{AC_1}\right| > 2.78 \times \left(\sqrt{AC_{AVG}}\right) \times CV_{FB}$$

472. On page 41149, in the first column, in § 1926.1101, in Appendix B, under the heading entitled ''*Quality Control,*'' in the first paragraph, lines 6 and 7 are corrected by removing the words ''for the CV curve shown below''.

Appendix F to § 1926.1101 [Corrected]

472a. On page 41150, in the second column, the heading of Appendix F to § 1926.1101 is corrected to read:

Appendix F to § 1926.1101—Work Practices and Engineering Controls for Class I Asbestos Operations (Non-Mandatory)

* * * * *

473. On page 41152, in the third column, in § 1926.1101, in Appendix F, under the heading entitled ''*Cleaning the Work Area,*'' in the second paragraph, line 4, the word ''encapsulate'' is corrected to read ''encapsulant''.

Appendix H to § 1926.1101 [Corrected]

474. On page 41153, in the first column, in § 1926.1101, in Appendix H, under the heading entitled ''*III. Respirators and Protective Clothing,*'' paragraph A, line 17 is corrected by adding the word ''a'' after the word ''conduct''.

475. On page 41153, in the first column, in § 1926.1101, in Appendix H, under the heading entitled ''*IV. Disposal Procedures and Clean-up,*'' paragraph E, line 1, the word ''if'' is corrected to read ''is''.

476. On page 41153, in the second column, in § 1926.1101, in Appendix H, under the heading entitled ''*V. Access to Information,*'' paragraph B, line 5, the word ''trowled-on'' is corrected to read ''troweled-on''.

Appendix K to § 1926.1101 [Corrected]

477. On page 41155, in the second column, in § 1926.1101, in Appendix K, under the heading entitled ''1.8 Toxicology,'' line 9 is corrected by adding the words ''and 29 CFR 1915.1001'' after the number ''1926.1101''.

478. On page 41155, in the third column, in § 1926.1101, in Appendix K, under the heading entitled ''2.4 Shipment,'' paragraph (a), line 2 is corrected by removing the words ''(such as the OSHA 21)''.

Signed at Washington, D.C. this 20th day of June, 1995.

Joseph A. Dear,

Assistant Secretary, Occupational Safety and Health Administration.

[FR Doc. 95–15489 Filed 6–28–95; 8:45 am]

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Thursday
June 29, 1995

Part IV

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 1995; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 95–3; FCC 95–227]

Assessment and Collection of Regulatory Fees for Fiscal Year 1995

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The commission has revised its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 1995. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees. For fiscal year 1995 sections 9(b)(2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees. These revisions will further the National Performance Review goals of reinventing Government by requiring beneficiaries of Commission services to pay for such services.

EFFECTIVE DATE: September 18, 1995.

FOR FURTHER INFORMATION CONTACT: Peter W. Herrick, Office of Managing Director at (202) 418–0443, or Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

In the Matter of: Assessment and Collection of Regulatory Fees for Fiscal Year 1995.

Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act.

Report and Order

Adopted: June 14, 1995.

Released: June 19, 1995.

By the Commission.

Table of Contents

I. Introduction

1. The Congress, pursuant to Section 9 of the Communications Act of 1934, as amended, has required that the Commission collect $116,400,000 in FY 1995 to recover certain of its regulatory costs. On January 12, 1995, the Commission released a Notice of Proposed Rule Making, *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal year 1995*, MD Docket No. 95–3, FCC 95–14 (*Notice*), 60 FR 3807 (1995). In the *Notice*, the Commission asked for comments on proposals to revise its Schedule of Regulatory Fees.[1] The Commission now has under consideration a proposed *Report and Order* to revise its Schedule of Regulatory Fees. *See* 47 CFR 1.1152 through 1.1156.

2. In revising our regulatory fees, we adjusted our Regulatory Fee Schedule to recover $116,400,000 in regulatory costs, consistent with the amount that Congress has appropriated for our enforcement, policy and rule making, international, and user information activities for FY 1995.[2] 47 U.S.C. § 159(a). In addition, we have amended the Schedule to collect regulatory fees from regulatees of services not included in the FY 1994 Schedule and we have modified our method of assessing fees for certain services. 47 U.S.C. §§ 159(b)(1)(A), (b)(3). The revised Regulatory Fee Schedule is set forth in Appendix B.

3. For several categories of service, the regulatory fees for FY 1995 are significantly higher than corresponding fees for FY 1994. *See* 47 U.S.C. § 159(g); *see also Implementation of Section 9 of the Communications Act* (*FY 1994 Order*), 9 FCC Rcd 5333 (1994) *Petitions for Reconsideration Pending*, 59 FR 30984 (1994). Our revised assessments result, for the most part, from increases in the amount that Congress has appropriated for Commission activities whose costs must be recovered through regulatory fees. As noted, the amount appropriated and to be recovered through regulatory fees is $116,400,000. That amount is 93 percent greater than the $60,400,000 that Congress required us to recover through regulatory fees in FY 1994. The impact of this increase is, however, lessened for some categories of services by anticipated revenues from categories of regulatees that we added to the Regulatory Fee Schedule and by increases in the number of payment units, *e.g.*, subscribers.[3] Similarly, for some services increases in the fees exceed 93% because of the reallocation of FTEs, decreases in the number of payment units, and modification of the methodology for computing fees to better reflect the benefits derived from the Commission's regulation.

4. In determining the individual fee amounts for FY 1995, Section 9 of the Act requires that we first determine the number of full-time equivalent

[1] The pleadings and reply pleadings are listed in Appendix J.

[2] *See* Public Law 103–317, 108 Stat. 1724 at 1737–38 (August 26, 1994).

[3] Payment units represent the number of individual payments available in a particular service to generate the required revenue in that service. Payment units also represent, in a different context, the number by which a payor must multiply the fee amount for a particular service in order to calculate its total fee due for the service. For example, ''subscribers'' is the payment unit applicable to Cable Television fees. The number of subscribers is divided into the overall Cable Television revenue requirement to determine the fee amount for that service, and it is also used by payors to determine the system's total fee liability (i.e., by multiplying the payment units by the fee amount to determine the system's total fee requirement).

employees (FTEs)[4] associated with our regulatory activities, and then determine the amount to be recovered from each fee category by estimating the number of FTEs assigned to each category. ''Mandatory adjustments'' are then made to the Section 9 Regulatory Fee Schedule. An initial attempt to develop individual fees by allocating FTEs down to the individual fee level rather than at the grouped category level proved ineffective. Since we do not have a cost accounting system to gather appropriate data on how Commission employees allocate their time, estimated FTE data yielded anomalous results which would have required substantial ''permitted amendments'' to resolve obvious inequities.

5. Additionally, it became apparent in the fee development effort that the Commission's options were limited in terms of what it could do to make the fees more equitable and at the same time assure that the Commission collects the $116.4 million that Congress has required. This meant that we could not recommend adoption of proposals that would have resulted in the regulatees being unsure about the amount of their fee payment and the staff having no way to verify that proper payments were made. In addition, we had difficulty developing fees in several areas because the Commission does not always have accurate or complete information concerning the number of regulatees and/or measurement units essential to fee collection verification requirements. Thus, it became necessary in a number of instances to utilize industry estimates of payment volumes instead of relying on information available within the Commission.

6. Finally, much of our policy and rule making efforts are expended in the development of new and emerging technologies and services (*e.g.*, PCS, DBS, and LEOs). We found that, as a practical matter, we had to allocate the costs associated with these activities to existing licensees in other services because there was no operational systems or customer base on which to assess a fee for these new services. To alleviate the regulatory burden on existing licensees, we urge the Congress to allow the Commission to recoup, from amounts received from competitive bidding under Section 309 of the Communications Act, at least such amount as would otherwise be allocable as regulatory fees for such services.

II. Background

7. Section 9(a) of the Act requires us to assess and collect annual regulatory fees to recover the costs, as determined annually by Congress, of our enforcement, policy and rule making, international, and user information activities.[5] 47 U.S.C. 159(a). Congress established our Regulatory Fee Schedule for FY 1995. 47 U.S.C. § 9(g). In our *FY 1994 Report and Order*, 59 FR 30984 (1994), we set forth the Regulatory Fee Schedule for FY 1994 and prescribed rules to govern payment of the fees, as required by Congress.[6] 47 U.S.C. § 159(f)(1); 47 CFR 1.1151–1.1166.

8. For fiscal years after FY 1994, Section 9 requires that we adjust the fees so that we can reasonably expect to collect the amount specified by Congress. 47 U.S.C. § 159(b)(1)(B). Sections 9(b) (2) and (3) provide for annual ''Mandatory Adjustments'' and ''Permitted Amendments'' to the Schedule of Regulatory Fees.

9. In making Section 9(b)(2)'s mandatory adjustments, we first consider the amount that we are to collect as set forth in our Appropriations Act. 47 U.S.C. §§ 159(b)(2), (b)(1)(B). Second, we identify the number of FTEs allocated to our enforcement, policy and rule making, user information, and international activities. 47 U.S.C. § 159(b)(1)(A). 159(b)(1)(A). Third, we determine the amount to be recovered from each *fee category*, *e.g.*, Common Carrier, by estimating the number of FTEs assigned to each fee category. 47 U.S.C. § 159(b)(2). Finally, we make proportionate adjustments to the individual fees set forth in Section 9(g)'s Regulatory Fee Schedule in order to determine the revised fee for the particular services within each service category for FY 1995. *Id*. In determining individual service fees, we take into consideration the estimated number of payment units, *e.g.*, licensees, for each service. 47 U.S.C. § (b)(2)(A).

10. Once we have determined each service's ''mandatory fee,'' as described above, Section 9(b)(3), relating to ''Permitted Amendments'' to the Schedule, provides that, if necessary, we shall amend the Schedule of Regulatory Fees, as provided in Section 9(b)(1)(A) to, *inter alia*, reflect the benefits of our regulation to the payers of the fees for each service by considering factors that we determine are necessary in the public interest. 47 U.S.C. §§ 159(b)(3), (b)(1)(A). In making these amendments, we ''shall add, delete, or reclassify services in the Schedule to reflect additions, deletions or changes in the nature of its services * * *.'' 47 U.S.C. § 159(b)(3). Finally, while the fees are not judicially reviewable, we are required to notify Congress of any permitted amendments to the Regulatory Fee Schedule 90 days before those amendments become effective. 47 U.S.C. § 159(b)(2), (3), (4)(B).

III. Discussion

A. FY 1995 Regulatory Fees

1. General Discussion

11. In adjusting our regulatory fees pursuant to Section 9(b)(2)'s provisions for ''Mandatory Adjustments'', we first identified our directly assigned FY 1995 regulatory fee FTEs in the Wireless, International, Mass Media, Common Carrier and Cable Services Bureaus. We next allocated these regulatory fee FTEs to the appropriate Section 9 regulatory fee category (*i.e.* Private Radio, Mass Media, Cable Services, and Common Carrier). We then identified additional FTEs from bureaus and offices supporting the regulatory fee activities of the operating bureaus.[7]

Appendix C contains a more detailed description of our allocation of FTEs by activity. The resulting allocation of FTEs, rounded to the nearest tenth of a percent, is as follows:

[4] Full Time Equivalent (FTE) employment is the total number of regular straight-time hours (*i.e.*, not including overtime or holiday hours) worked or to be worked by current and future employees divided by the number of compensable hours applicable to each fiscal year. *See* Office of Management and Budget Circular A–11, Section 13.1, Definitions relating to employment.

[5] Our various activities, including those whose costs are subject to recovery through regulatory fees, are described in Appendix I.

[6] In the *FY 1994 Order*, we adopted rules to implement the collection of regulatory fees, including payment procedures, specific exemptions from the payment of regulatory fees, procedures for requesting waivers, reductions and deferments of fee payments, and penalties for late payment or non-payment of the fees. We shall in the near future address petitions for reconsideration of the *FY 1994 Order* and consider whether to make amendments to our implementing rules.

[7] The Compliance and Information Bureau (CIB) (formerly the Field Operations Bureau), the Office of Engineering and Technology (OET), and the Office of Managing Director (OMD) perform activities supporting the operating Bureaus. FTEs assigned to CIB, OET and some elements of OMD supporting the regulatory activities of the operating Bureaus were allocated to the Private Radio, Mass Media, Common Carrier, and Cable Services fee categories on a pro rata basis.

Regulatory fee category	Regulatory fee FTEs	Regulatory fee percentage	Percentage of total FCC FTEs
Private Radio	103	7.3	4.5
Mass Media	253	18.0	11.1
Common Carrier	689	49.0	30.3
Cable Services	361	25.7	15.9
Total	1,406	100.0	61.9

12. Next, we allocated our $116,400,000 revenue requirement to the Private Radio, Mass Media, Common Carrier, and Cable Services activities, based on the regulatory fee percentages shown above. For example, to derive the amount to be recovered from cable services, we calculated that the 25.7 percent of total FTEs representing the 361 FTEs assigned to the cable services activity resulted in $29,914,800 to be recovered through the collection of cable services fees. The resulting allocation of costs, rounded to tenths of a million, by regulatory fee category, is as follows:

Regulatory fee category	Cost allocation (million)
Private Radio	$8.5
Mass Media	21.0
Common Carrier	57.0
Cable Services	29.9

13. After determining these cost allocations, we updated the number of FY 1995 payment units for the individual services within each fee category. For example, we estimate that there are approximately 60,000,000 payment units for cable television systems, i.e., cable subscribers. The number of payment units is based upon information provided by Commission program experts and supplemented by information contained in actual licensee data bases maintained by the Commission, information provided by industry groups or contained in trade publications, actual data from FY 1994 regulatory fee collections, and from data provided in the comments in this proceeding.[8] *See* Appendices D through G.

14. Next, in order to make the proportionate changes in the statutory schedule of fees required by Section 9(b)(2), we compared our FY 1995 revenue requirement in each regulatory fee category, *e.g.,* Cable Services, with the total amount that would be collected from all of the services within each category under the FY 1994 fee schedule. For example, we estimated that approximately $22.7 million, or $7.2 million less than its $29.9 million FY 1995 revenue requirement, would be collected from cable system payers based upon our FY 1994 fees. Therefore, we pro-rated the $7.2 million shortfall to the individual services within the cable services fee category (*i.e.,* CARS licensees and cable system subscribers).[9] We then divided the revenue requirement in each service by the payment units to determine the revised amount of the individual fee. These revised fees constitute the ''mandatory adjustments'' required by Section 9(2).

15. Following our determination of ''Mandatory Adjustments'', we reviewed each service and its associated fee assessment to determine if the nature of a service or the public interest warranted a fee adjustment pursuant to Section 9(b)(3)'s requirements for ''Permitted Amendments.'' Pursuant to our authority to make permitted amendments to the fees, we revised our method for calculating fees for local exchange carriers (LECs), interexchange carriers (IXCs), and other common carriers and certain international services. Additionally, we are establishing a reduced fee for satellite television stations to distinguish those stations from full service television stations and we are adding a fee requirement for licensees of FM and TV translator and booster stations. Also, we established a fee for one-way paging services separate from the fee for other common carrier mobile services, reduced the fee for space stations, and eliminated the fee for receive only earth stations. After making these permitted amendments, we revised the remaining fees within the affected service category to take into account the impact of the fee modification upon other services within the category.[10]

16. Comsat General and Comsat Video argue that their proposed fee increases are disproportionately high when compared to the increases proposed in other categories of service and within their own category of service, and that the increase constitutes a violation of Section 9(b)(2)'s requirement that we make proportionate adjustments to the statutory fees when recalculating the fees to collect a greater or lesser amount than previously required by Congress. These parties assert that our proposed fee increases with respect to Common Carrier activities and, in particular, geosynchronous space stations are neither proportionate nor in the public interest, and, that they constitute illegal taxes because they do not reasonably reflect the true cost of regulatory service provided to these entities. *See National Cable Television Ass'n.* v. *United States,* 415 U.S. 336, 340 (1974) (*NCTA I*). COMSAT General and Comsat Video state that a fee is distinguishable from a tax in that a fee is ''a payment for a special privilege or service rendered, and not a revenue measure.'' *National Cable Television Ass'n.* v. *F.C.C.,* 554 F.2d 1094, 1106 (D.C. 1976). According to these parties, the fee must be calculated to return the cost of the service or benefit at a rate that reasonably reflects the costs of the services performed and the value conferred on the payor. *Electronic Industries Ass'n.* v. *F.C.C.,* 554 F.2d 1109, 1117 (D.C. 1976).

17. In addition, the parties argue that our proposed allocation of FTEs to the major categories of service fails to comply with the requirements of

[8] We have made a number of changes to our payment unit estimates. The revised estimates are provided in each Section pertinent to individual fees beginning at paragraph 27 and are also contained in Appendixes D through G. In applying the pro-rata formula for determining individual fee amounts within each fee category, revised payment units have the effect of raising or lowering the allocated costs (revenue requirements) for individual services, as well as, the calculated fees for all fees in a category depending on whether the payment unit volumes increased or decreased from those shown in the NPRM.

[9] Due to revisions to payment units, cost allocations (revenue requirements) may change for a particular service. In addition, cost allocations may change due to changes made pursuant to permitted amendments (see Paragraph 12).

[10] We have not proposed regulatory fees in FY 1995 for the Personal Communications Service (PCS), Commercial Mobile Radio Service (CMRS) other than those listed here (cellular and public mobile), Low Earth Orbital (LEO) Satellite Service an the Direct Broadcasting Satellite (DBS) Service because no facilities were authorized on our proposed dates for calculating fees or a negligible number of FTEs applicable to the regulatory fee program are assigned to these services.

Section 9. These parties contend that our proposed allocation of FTEs to the various major service categories violates Section 9(b)(1)(a) because, in their view, the *Notice* contains insufficient supporting information to permit analysis of the basis for our FTE allocations. Comsat General argues that a detailed accounting of the overhead and employees' time, based on a task code charge system, is necessary to justify the reasonableness of our assignment of FTEs to the common carrier and other categories and to the individual services within these categories.

18. Also, several parties contend that the *Notice* fails to demonstrate that individual fees are ''reasonably related to the benefits provided to the payor of the fee,'' in violation of Section 9(b)(1)(A), and are contrary to the intent of Congress as reflected in the legislative history of Section 9. They also contend that the regulation of their particular service does not justify the fee proposed for the service. GE America Communications, Inc. (GE Americom) states that the amount of cost recovery that we allocated to geosynchronous satellites should be reduced because our regulatory activities with respect to in-orbit domestic satellites are *de minimis* since their licensees are not the subject of enforcement proceedings, our domestic satellite policies are well-established with little need for rule makings, and our deregulatory policies have further reduced the cost of space segment regulation.

19. We reject Comsat General and Comsat Video's arguments that our proposed fees constitute unauthorized taxes. In reviewing a similar fee program enacted by Congress, the Supreme Court held that *NCTA I* stood only for the proposition that Congress must indicate clearly its intention to delegate ''discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by imposing additional financial burdens, whether characterized as 'fees' or 'taxes' on those parties.'' *Skinner* v. *Mid-American Pipe Line Co.*, 490 U.S. 212, 224; 109 S.Ct. 1762, 1733 (1989).[11] *Skinner* thus bars any interpretation of *NCTA I* and its progeny in the courts of appeals that would limit Congress to allowing agencies to set regulatory fees only in amounts that reflect services received by the regulated entities. *Skinner* also stated that a congressional delegation of authority to raise funds was proper where Congress provides sufficient guidance to the collecting agency concerning the identity of the entities subject to the fee, the purposes for which the funds may be used, the manner in which the fees are to be established, and the aggregate amount of the fees to be collected. 490 U.S. 219–220, 109 S. Ct. 1731.

20. Subsequent to the Court's decision in *Skinner*, Congress adopted Section 9 directing us to recover the full amount of specified regulatory costs from regulatees. Consistent with the guidance in *Skinner*, Congress identified the categories of service providers subject to the fees, and declared that fees are to be assessed in a rule making proceeding, based upon the number of FTEs within our bureaus and offices performing enforcement, policy and rule making, international, and user information activities. Section 9 further requires us to take into account factors reasonably related to the benefits provided to the payor of the fee by these activities, and we are to recover the costs of these activities only if required in annual Appropriations Acts and only in the aggregate amount annually designated by Congress. As described below, our actions to revise the regulatory fees are consistent with the requirements of Section 9. Thus, our revisions to the Regulatory Fee Schedule in establishing regulatory fees for FY 1995 satisfy the Court's concerns and guidelines regarding unauthorized taxation of persons subject to a fee requirement.

21. The FTE allocations used to calculate the amounts to be recovered from each fee category were developed in full compliance with the requirements of Section 9 of the Act. In developing the FY 1995 regulatory fee schedule, we relied upon estimates of year-end FTEs from our Bureaus and Offices, because actual FTEs utilized are not known until the completion of the fiscal year. Thus, to produce the best possible estimates of FY 1995 year-end FTEs, we conducted a survey in December 1994, immediately prior to releasing the *Notice* in this proceeding to estimate FTEs for this rule making.[12] The Commission performed a review of its staffing, taking into consideration expected new and replacement hiring and attrition through the end of the fiscal year, in order to determine the most accurate estimate of projected FY 1995 year-end FTEs by organization. Next, the Bureaus and Offices allocated their assigned year-end FTEs to each of their major functional activities (e.g., Authorization of Service, Enforcement, Public Information). The staff actually assigned to perform these allocations within the Bureau and Offices were those individuals most familiar with the regulatory programs and associated staffing under their auspices.[13]

22. In contending that their proposed fees are unduly high, commenters generally have failed to recognize that Section 9 requires that we add to our direct FTEs, *i.e.*, those represented by staff directly assigned to our operating Bureaus, any support FTEs representing staff assigned to overhead functions such as our field and laboratory staff and certain staff assigned to the Office of Managing Director. 47 U.S.C. § 159(b)(1)(A). These support FTEs comprise nearly 40% of all FTEs associated with regulatory fees. Therefore, personnel costs to be recovered through regulatory fees are approximately 40% higher than the costs associated with staff directly assigned to an operating Bureau and performing functions covered by the regulatory fee program. Further, personnel costs represent only 75% of our costs to be recovered through regulatory fees. Thus, the addition of non-personnel costs (equipment, rents, contractual services, supplies, etc.) to personnel costs results in an actual cost of regulation significantly exceeding direct staff costs. The addition of benefits and other obligations to the average Commission salary cost results in an addition cost of approximately $33,000 per employee. Although some of the parties view these costs of regulation to be excessive, they often reflect costs associated with our regulatory programs that they may not have fully considered.

23. Support FTEs, and ultimately costs, are allocated to each regulatory fee category (e.g., cable television) based upon the number of direct FTEs assigned to each fee category. We

[11] *Skinner* stated that in *NCTA I*, the Court had expressed doubt whether Congress had intended in the particular statute in question to delegate the authority to recover the costs of benefits to the public by assessing fees on regulated parties. For that reason, it struck down the agency's efforts to recover such costs. 490 U.S. at 223–224; 109 S.Ct. at 1733.

[12] When the survey was conducted, in December 1994, only approximately 20% of the total FTEs expected to be utilized for the entire FY 1995 time frame were actually ''accrued''. As such, approximately 80% or 1,125 of the 1,406 FTEs for FY 1995 were estimated based on this small 20% ''sample''.

[13] Congress recognized, in adopting the Schedule of Fees, that the Commission has no cost accounting system in place to assist in the estimation of final fiscal year FTEs and related costs. Public Law 103–66, 107 Stat. 313 at 401 (1993). Although the Commission is developing a cost accounting system and it should be in place for FY 1996, such a system would not provide a definitive count, but only an estimate of year-end FTEs even when fully implemented. In summary, we believe that the estimates of FTEs and costs utilized in this proceeding are reasonable and represent the most accurate information available. We have provided in Appendix C an explanation of how FTEs were calculated for each fee category.

believe our allocations of FTEs reasonably assign personnel and related costs attributable to each fee category. As noted, actual FTE assignments can only be determined once a fiscal year is completed. However, we are satisfied that our estimates, based upon careful review of current and anticipated FTE assignments conducted well into the fiscal year and shortly before the adoption of the *Notice* in this proceeding, yield an accurate estimate of FY 1995 FTE assignments.

24. We also note the concerns of several commenters that certain individual fees seem unreasonable relative to the benefits provided. In general, these commenters fail to recognize the formulaic approach to setting the mandatory fee levels dictated by Congress. Section 9 provides that, in setting individual fee amounts, we prorate increases or decreases to the individual services within each fee category. 47 U.S.C. § 159(b)(2). This statutory requirement remains the relationship between annually calculated fees and the fees initially established by the Congress. It does not provide the flexibility to adjust fees relative to benefits to the payor or in consideration of other factors. These factors, however, are considered in the next stage of the fee development process as permitted amendments, if warranted.

25. As discussed earlier, the Commission is not able to allocate detailed costs to individual fee line items (e.g., VHF Television Stations in the 51–100 markets). Rather, those costs are allocated to broad categories of services by Section 9. Even when the Commission implements a cost accounting system in FY 1996, it may not be cost effective to obtain detailed cost data relative to our regulation of individual services. Since we do not relate specific regulatory costs to particular services within a fee category, we are constrained by Section 9 and by our information collection systems to the formulaic approach to the mandatory adjustment of regulatory fees. However, any inequities resulting from this approach are likely to be small and confined to like services due to the pro-rata formula applied by fee category. As noted, in developing the individual fees, as discussed below, we have carefully examined any apparent inequities computed pursuant to the mandatory formula required by Section 9 and have adjusted certain fees pursuant to our authority to make ''permitted'' amendments to the fees. In making the permitted amendments, the Commission is not required to calibrate the amount of the regulatory fee collected precisely to the cost of the benefits each regulatee derives from the Commission's regulation. *See United States* v. *Sperry Corp.*, 493 U.S. 52, 60 (1989) (upholding a one and a half percent user fee of amount recovered by claimant before Iran-U.S. Claims Tribunal); *Massachusetts* v. *United States* 435 U.S. 444, 463 (1978) (upholding flat registration fee on civil aircraft). Moreover, the Commission can collect fees from regulatees for their use of frequencies and for the potential benefits of its regulatory activities, even if they do not utilize these activities. *See United States* v. *Sperry Corp.*, 493 U.S. *supra* at 63.

26. Also, many commenters have mistakenly correlated gross increases in fee amounts from FY 1994 to FY 1995 to increases in regulation. Although there may, in fact, be changes in regulatory burden for certain services, the primary reason for increased fees overall is the 93% increase in recoverable fees mandated by Congress. Additionally, Section 9 prohibited any adjustment of individual fees established in the Regulatory Fee Schedule for FY 1994. 9 U.S.C. § 159(b)(2). Thus, the FY 1994 fee was established by Congress and was not adjusted to reflect changes in the allocation of FTEs not considered by Congress. Our development of FY 1995 fees in accordance with Section 9's requirements represents the first allocation of FTEs to appropriate fee categories. This has resulted in a realignment of costs between major fee categories and a redistribution of relative fee revenue requirements among the four major fee categories. As the commenters have noted, certain fees decrease from FY 1994 levels while other fees increase. This primarily reflects the reallocation of FTEs for FY 1995 compared to the Congressionally mandated Regulatory Fee Schedule in effect in FY 1994.

27. We have retained, for fee determination purposes, the regulatory fee category classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) set forth in Section 159 in order to minimize any adverse impact on the fees resulting from changes in classification. Further, for ease in locating particular fees, we have formatted the FY 1995 Schedule of Fees to reflect our new organizational structure even though we have developed those fees based upon the fee activities contained in the FY 1994 Regulatory Fee Schedule. *See* Appendix B. With the exception of annual fees in the amount of $5.00 or less, individual fee amounts have been rounded to the nearest $5 in the case of fees under $1,000, or to the nearest $25 in the case of fees of $1,000 or more in accordance with Section 9(b)(2). Appendices C through G describe the method by which FTEs were assigned to the fee categories and the development of the individual fees within each major category.

28. We have revised the revenue requirements for individual fees in several of the fee categories. Revenue requirements change whenever volume estimates change due to the pro-rata formula associated with the mandatory provisions of Section 9. Likewise, any permitted amendments which reduce fees have the effect of reallocating to other services within a fee category the revenues which would have been collected if the permitted amendment had not been accepted. In effect, each volume change and/or permitted amendment impacts the revenue requirement in each service within the category. Zero-basing each revenue calculation makes any attempt to explain the calculated difference between revenue requirements shown in the *Notice* and in this *Report and Order* meaningless. We, therefore, have not attempted to do this and instead, have explained each permitted amendment we've made and also described the source of any changes to volume estimates.

2. Private Radio Services.

29. In developing the FY 1995 regulatory fees for Private Radio Services (set forth in the Wireless Radio Services category in the FY 1995 Regulatory Fee Schedule), we made mandatory adjustments to the Regulatory Fee Schedule required by 47 U.S.C. § 159, considering the number of FTEs and the estimated volume of payments. We have also taken into account the quality of the frequencies licensed. Accordingly, we have decided to continue to assess the two levels of regulatory fees applied to these services by Congress' fee schedule, *i.e.*, exclusive use services and shared use services, in recognition that those licensees who generally receive a higher quality communications channel, due to exclusive or lightly shared frequencies, should pay a higher fee than licensees who operate on heavily shared frequencies. 47 U.S.C. § 159(2).

30. We are implementing no changes to the rules for calculating fee payments and submitting regulatory fee payments for Private Radio Services. Due to the relatively small regulatory fees generally assessed for the services, we will continue to require applicants for new, reinstatement, and renewal licenses in these services to pay the entire

regulatory fee for the full term of their requested license at the time they file their license applications.[14] *See* Appendix D for a description of the development of the fees for the various services within the Private Radio category.

a. *Exclusive use services.* 31. *Land Mobile Services.* The fees for Land Mobile Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category and include services authorized under Part 90 of the Commission's Rules to provide high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Service (SMRS).

32. The FY 1995 revenue requirement for Land Mobile Services is $396,390. Our estimated payment units for Land Mobile are 13,213 units. Dividing the revenue requirement by the number of payment units and its license term of five years results in an annual fee of $6 per license rather than the $7 annual fee proposed in the *Notice.*[15] Thus, Land Mobile licensees are subject to a $6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal, or reinstatement license. The total regulatory fee due is $30 for a license with a five year term or $60 for a license with a 10 year term. *See* Guidelines, Appendix H at ¶ 4.

33. *Microwave Services.* The fees for Microwave Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio Service category. Microwave Services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline, and utility equipment.

34. The FY 1995 revenue requirement for Microwave Services is $193,200. Payment units for Microwave Services are estimated to be 6,440 licensees. Dividing the revenue requirement for Microwave Services by its payment units and license term of five years results in an annual fee of $6 per license. Thus, Microwave licensees are subject to a $6 annual regulatory fee per license, rather than the $7 annual fee proposed in the *Notice,* payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year license term. *See* Guidelines, Appendix H at ¶ 6.

35. *Interactive Video Data Service (IVDS).* The fees for IVDS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis.

36. The FY 1995 revenue requirement for IVDS is $43,500. Payment units for IVDS are estimated to be 1,450 licenses. Dividing the revenue requirement of IVDS by its payment units and license term of five years results in an annual fee of $6 per license rather than the $7 fee we proposed in the *Notice*. Thus, IVDS licensees are subject to a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year term of the license. *See* Guidelines, Appendix H at ¶ 7.

b. *Shared use services.* 37. *Marine (Ship) Service.* Fees for marine (Ship) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Marine (Ship) Service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats.

38. The FY 1995 revenue requirement for the Marine (Ship) Service fee category is $5,070,420. Payment units are estimated to be 169,014 stations. Dividing the revenue requirement of the Marine (Ship) Service by its payment units and license term of ten years results in an annual fee of $3 per station. Thus, as proposed in the *Notice,* Marine (Ship) Station licensees are subject to a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the ten year license term. *See* Guidelines, Appendix H at ¶8.

39. *Marine (Coast) Service.* Fees for Marine (Coast) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Marine (Coast) Service stations are land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways.

40. The FY 1995 revenue requirement for this service is $41,955 and the estimated payment units are 2,797 licenses. Dividing the revenue requirement of the Marine (Coast) Service by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice,* Marine (Coast) licensees are subject to a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term. *See* Guidelines, Appendix H at ¶ 9.

41. *Private Land Mobile (Other) Services.* Fees for Private Land Mobile (Other) Services are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio Service category. Private Land Mobile Radio Services are authorized under Parts 90 and 95 of the Commission's Rules. Stations in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services.

42. The FY 1995 revenue requirement for Private Land Mobile (Other) Services is $1,396,275. Payment units are estimated to be 93,085 licenses. Dividing the revenue requirement of these services by their payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice,* licensees of these services are subject to a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is $15 for the five year license term. *See* Guidelines, Appendix H at ¶ 10.

43. *Aviation (Aircraft) Service.* The fee for Aviation (Aircraft) Service is set

[14] In the event that the subject application is not granted, the entire regulatory fee submitted will be returned upon request of the payor of the fee. *See* 47 CFR 1.1159(a)(2)(iii).

[15] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications is less than one tenth of one percent and, therefore, is statistically insignificant.

forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Aircraft) stations are authorized to provide communications between aircraft and from aircraft to ground stations. The service includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules.

44. The FY 1995 revenue requirement for the Aviation (Aircraft) Service is $1,130,430. The payment units are estimated to be 37,681 licenses. Dividing the revenue requirement of the Aviation (Aircraft) Service by its payment units and license term of ten years results in an annual fee of $3 per station, as proposed in the *Notice*. Thus, licensees of aircraft stations are subject to a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 per station for the ten year license term. *See* Guidelines, Appendix H at ¶ 11.

45. *Aviation (Ground) Service.* Fees for Aviation (Ground) Service are set forth in the FY 1995 Regulatory Fee Schedule for the Wireless Radio service category. Aviation (Ground) Service stations provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules.

46. The FY 1995 revenue requirement for the Aviation (Ground) Service is $39,900. Payment units for the Aviation (Ground) Service are estimated to be 2,660 licenses. Dividing the Service's revenue requirement by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, licensees of Aviation Ground stations are subject to a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term. *See* Guidelines, Appendix H at ¶ 12.

47. *General Mobile Radio Service (GMRS).* Fees for the GMRS are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. GMSR licensees provide personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules.

48. The FY 1995 revenue requirement for GMRS is $41,775. Payment units for GMRS are estimated to be 2,785 licenses. Dividing GMRS' revenue requirement by its payment units and license term of five years results in an annual fee of $3 per license. Thus, as proposed in the *Notice*, GMRS licensees are subject to a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per license for the five year license term. *See* Guidelines, Appendix H at ¶ 13.

c. *Amateur vanity call signs.* 49. Fees for Amateur Vanity Call signs are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. The fee covers voluntary requests for specific call signs in the Amateur Radio Service. We have concluded our rule making proceeding related to the authorization of vanity call signs. *See Report and Order in PR Docket No. 93–305*, 10 FCC Rcd 1039 (1995), 59 FR 558 (1994). Therefore, amateur radio operators are required to submit a regulatory fee payment with their vanity call sign application in FY 1995.

50. The revenue requirement for vanity call signs is $840,000. We have revised our estimated payment units to 28,000 vanity call sign applications, as a result of further analysis by the Wireless Telecommunications Bureau. Dividing the service's revenue requirement by its estimated payment units and license term of ten years results in a fee of $3 per year per license as proposed in the *Notice*. Thus, holders of amateur vanity call signs are subject to a $3 annual regulatory fee per call sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee is $30 per license for the ten year license term.[16] *See* Guidelines, Appendix H at ¶ 14.

3. Mass Media

51. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees in the television, AM and FM services and in several auxiliary services. We have incorporated changes in payment volume estimates for satellite television stations, auxiliary radio licenses, and translator stations. The payment volumes were adjusted after further review of the Commission's licensing data. *See* Appendix E for a description of the development of the fees for services within the Mass Media category; *see also* Guidelines, Appendix H at ¶¶ 15–26.

a. *Commercial AM and FM radio.* 52. These categories include licensed commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) radio stations operating under Part 73 of the Commission's Rules. In developing our proposed FY 1995 fees for AM and FM stations, we determined that the public interest requires that we retain the operational class distinctions among AM and FM stations that Congress established in its Regulatory Fee Schedule. 47 U.S.C. § 159. Also, as a permitted amendment, we proposed a further distinction to recognize that the population density of a station's geographic coverage is a public interest factor warranting recognition in the fee schedule. We proposed to distinguish stations located in Arbitron radio markets vis-a-vis those not located in these markets and to allocate the fee burden utilizing a fee ratio between the Arbitron and non-Arbitron markets similar to the ratio of the fee requirement established for larger television station markets and ''remaining markets'' set forth in the Regulatory Fee Schedule. We proposed no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees.

53. Several commenters contend that Arbitron rankings are not useful for establishing the AM and FM fee structure. These parties state that markets are only ranked if a sufficient number of stations located within the market subscribe to the Arbitron service. Also, a station may be placed in a market if it competes with market stations even though the station may not be physically located in a major metropolitan area within the market. The National Association of Broadcasters (NAB) also argues that a station may be placed in an Arbitron market based on promotional programming during the rating period and recommends that a licensee be allowed to show that its placement in an Arbitron market is not representative of its service. Washington Broadcasting Company argues that stations 20 kilometers from the principal city in a market or serving less than 20 percent of the population of a market should not be considered as an Arbitron Market station. A number of licensees argue that fees should be based on a graduated scale by market size, differentiating between markets 1–10; 11–25; 25–50; 51–100; and remaining markets in a manner similar to that in the Regulatory Fee Schedule for television stations. Broadcast Market Associates and James Wagner recommend the fees be based on

[16] Section 9(h) exempts ''amateur radio operator licenses under part 97 of the Commission's Rules (47 C.F.R. Part 97)'' from the requirement to pay an annual regulatory fee. However, Section 9(g)'s Regulatory Fee Schedule explicitly includes ''Amateur Vanity Call Signs'' as a category subject to the payment of a regulatory fee.

the population a station serves. Montana Broadcasters Association argues that fees should be based on gross revenues. In contrast, Radio 840, Inc. argues that all stations in the same class be assessed the same fee without distinction as to market size.

54. We agree with commenters that our proposal to base fees on whether a licensee is ranked in an Arbitron market is flawed. The Arbitron rankings data is incomplete for fee determination purposes, and reliance upon it does not provide a sufficiently accurate and equitable methodology for determining fees. we attempted, within the limitations of available data, to compute fees on a graduated scale by market size. The results produced unexpected inequities that not only raised the fees significantly for markets 1–10 and 11–25, but also raised the fees at the low end for remaining markets. Moreover, the Commission's data bases do not contain population and gross revenue data from which we could compute fees. Therefore, we have decided not to implement the proposed fees methodology for AM and FM stations. Instead, for FY 1995 we will retain the fee methodology enacted by Congress for FY 1994.[17] In this regard, we note that although the Regulatory Fee Schedule does not differentiate between markets, the AM and FM fees differentiate between classes of stations and are low enough to avoid placing an onerous burden on most licensees. Thus, the regulatory fees for AM and FM stations for FY 1995 are as follows and represent the mandatory adjustments to the Regulatory Fee Schedule consistent with Section 9 (b)(2):[18]

AM Radio

Class A	$1,120
Class B	620
Class C	250
Class D	310

FM Radio

Classes C, C1, C2, B	$1,120
Classes A, B1, C3	745

We have made no change to the rules for calculating and submitting regulatory fees by AM and FM radio station licensees. *See* Guidelines, Appendix H at ¶ 16.

b. *Construction permits—commercial AM radio.* 55. This category includes holders of permits to construct new AM stations under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for the Commercial AM Construction Permit fee category is $9,875. Payment units for the service are estimated to be 79 AM Construction Permits. Dividing the revenue requirement for AM Construction Permits by the estimated payment units results in a regulatory fee of $125 per Construction Permit. Thus, for FY 1995, we are assessing holders of Construction Permits for Commercial AM Stations $125 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees are required to pay the applicable fee for the designated class of the station. We have made no change in the rules for calculating and submitting the regulatory fee by AM construction permittees. *See* Guidelines, Appendix H at ¶ 17.

c. *Construction permits—Commercial FM radio.* 56. This category includes holders of permits to construct new commercial FM stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for Commercial FM Radio Construction Permits is $435.860. Our estimate of the payment units is 703 Construction Permits. Dividing the revenue requirement for FM Construction Permits by the estimated payment units results in a regulatory fee of $620 per permit. Thus, for FY 1995, we are assessing permittees $620 for each permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a regulatory fee based upon the designated class of he station. We are making no change in the rules for calculating and submitting regulatory fees by FM construction permittees. *See* Guidelines, Appendix H at ¶ 18.

d. *Commercial television stations.* 57. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except Television Satellite, Translator, and Low Power Stations, addressed separately below. We are assessing Commercial Television Stations annual fees based on a station's market rankings as published by Warren Publishing in the 1994 Edition of the Television and Cable Factbook (No. 62). The FY 1995 revenue requirements for the different categories of VHF and UHF Commercial Television Stations are shown in Appendix E. Payments units for Commercial Television Stations are also shown in Appendix E. Dividing the revenue requirements for each Commercial Television Station category by the payment units for each category results in the following fees for Television Stations in each ADI market grouping:

VHF Markets 1–10	$22,420
VHF Markets 11–25	$19,925
VHF Markets 26–50	$14,950
VHF Markets 51–100	$9, 975
VHF Remaining Markets	$6,225
UHF Markets 1–10	$17,925
UHF Markets 11–25	$15,950
UHF Markets 26–50	$11,950
UHF Markets 51–100	$7,975
UHF Remaining Markets	$4,975

See Guidelines, Appendix at ¶ 19.

58. Several commenters argue that the Arbitron market structure is obsolete and should be replaced with the Nielsen Station Index. Further, commenters argue that the Arbitron market structure is disadvantageous to small non-ADI markets and the stations located on the fringe of larger markets. Various solutions proposed include basing fees on Grade B Contour coverage or percentage of audience share.

59. We decline to consider any change in the methodology established by the Congress and affirmed in the FY 1994 schedule. We were unable to obtain sufficient information to properly evaluate the merits of using the Nielsen Station Index for establishing fees. The Commission's data bases do not contain data necessary to establish fees from Grade B Contour coverage or percentage of audience share. Thus, we will retain the Arbitron market groupings for FY 1995.

e. *Commercial television satellite stations.* 60. Pursuant to our authority to make permissive amendments to our regulatory fees, Television Satellite Stations (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station will be assessed a fee separate from the fee for fully operational television stations. This fee is based upon the $500 fee passed by the House of Representatives for Television Satellite Stations for FY 1994. While not legally binding, the $500 base fee was determined to be appropriate for licensees of Television Satellite Stations in our FY 1994 authorization bill passed in the House of Representatives. *See* H.R. 4522. In addition, pursuant to the instructions of Section 9, 47 U.S.C. § 159(b)(3), a separate fee for Television Satellite Stations would take into account the public interest factors reflected in comments filed in the proceeding to adopt the FY 1994 Schedule of Regulatory Fees. In developing the FY 1995 fee for Television Satellite Stations, we use the $500 fee proposed by the House of

[17] Interested parties may file petitions for rule making setting forth a proposed AM and FM fee methodology as long as the proposal is supported by readily available data to be considered in connection with the development of the Notice of Proposed Rulemaking for FY 1996.

[18] Appendix E shows the payment volumes and cost allocations for assessing regulatory fees for AM and FM radio.

Representatives for FY 1994 to calculate a FY 1995 fee for Television Satellite Stations. We divide a ''simulated'' FY 1994 revenue requirement by the estimated number of Television Satellite Station licensees. Our FY 1995 revenue requirement for Television Satellite Stations is $68,200. Following release of our *Notice*, we revised our estimate of payment units to 110 licensed Television Satellite Stations based on an updated analysis of these stations. Therefore, we are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to establish a Television Satellite fee of $620 per station. We caution that only those stations designated as Television Satellite Stations in the 1994 Edition of the Television and Cable Factbook (No. 62) are eligible to submit the fee applicable to Television Satellite Stations. Full-service television licensees are subject to the regulatory fee payment required for their class of station and market.[19] *See* Guidelines, Appendix H at ¶ 20.

f. *Construction permits—Commercial VHF television stations.* 61. This category includes holders of permits to construct new Commercial VHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is $54,725. The number of permits is 11. Dividing the revenue requirement for VHF Television Construction Permits by its payment units results in a fee of $4,975. Therefore, for FY 1995, we are assessing permittees $4,975 for each VHF Television Construction Permit held. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by VHF Television Construction Permittees. *See* Guidelines, Appendix H at ¶ 21.

g. *Construction permits—Commercial UHF television stations.* 62. This category includes holders of permits to construct new UHF Television Stations covered under Part 73 of the Commission's Rules. The FY 1995 revenue requirement for this service category is $576,375. Payment units for UHF Television Construction Permits are estimated to be 145 permits. Dividing the revenue requirement for this service category by its estimated payment units results in a fee of $3,975 for each UHF Television Construction Permit held. Therefore, we are assessing a fee of $3,975 per UHF Television Construction Permit. Upon issuance of an operating license, this fee would no longer be assessed. Instead, for the next regulatory fee period, licensees must pay a fee based upon the designated market of the station. We are making no changes to the rules for calculating and submitting regulatory fees by UHF Television Construction Permittees. *See* Guidelines, Appendix H at ¶ 22.

h. *Construction permits—Satellite television stations.* 63. We are exercising our authority to make permitted amendments to add a new service category to the Regulatory Fee Schedule in recognition that the holders of Construction Permits for UHF and VHF Television Satellite Stations should be charged a separate, lower fee than the fee charged holders of Construction Permits for fully operational Television Stations. *See* ¶ 56 above, where we exercised our authority to make permitted amendments to the Regulatory Fee Schedule relating to the fee for Television Satellite Stations. We developed the fee for Television Satellite Construction Permits by taking the average fee for VHF and UHF Television Stations and relating it to the average fee for Construction Permits for VHF and UHF Television Stations. Using this relationship and the revenue requirement for Television Satellite Stations results in a computed fee of $225 for Construction Permits for Television Satellite Stations. An individual regulatory fee payment is to be made for each Television Satellite Station Construction Permit held. Upon issuance of an operating license, this fee would no long be assessable. Instead, for the next fee period the licensee will be assessed the fee for an operating Television Satellite Station. *See* Guidelines, Appendix H at ¶ 23.

i. *Low power television, FM translator and booster stations, TV translator and booster stations.* 64. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01kw for a UHF facility and, generally, 1kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV broadcast station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 that rebroadcast the signals of full service stations on a frequency different from the parent station (Translators) or on the same frequency (Boosters).

65. We are exercising our authority to make permitted amendments to the Regulatory Fee Schedule to include FM Translator and Booster Stations because we believe these facilities were inadvertently omitted from the Regulatory Fee Schedule and we are unaware of any reason not to establish a fee for these services. The stations in this category are secondary to full service stations in terms of frequency priority.

66. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, nonprofitable, or only marginally profitable, serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order.*

67. The revenue requirement for this service category is $1,210,400. Our estimated payment units is 7,120 licenses, including licenses covering FM translators. Dividing the revenue requirement for this category by its estimated payment units results in a fee of $170 per license. Thus, for FY 1995, we assess licensees of Low Power Television Stations and licensees of both FM and TV Translators and Boosters an annual regulatory fee of $170 for each license held. We are making no changes to the rules for calculating and submitting regulatory fee payments by licensees in this service category. *See* Guidelines, Appendix H at ¶ 24.

j. *Broadcast auxiliary stations.* 68. This category includes licensees of Remote Pickup Stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary stations are generally associated with a particular Television or Radio Broadcast Station or Cable Television System.

69. The FY 1995 revenue requirement for this category is $900,000. We have revised estimated payment units to 30,000 licenses based upon a review of our license records. Dividing the category's revenue requirement by its estimated payment units results in a fee

[19] We recognize that an ongoing rule making proceeding is addressing whether Television Satellite Stations should continue to be exempt from the Commission's national television ownership restrictions. Our decision to assess a regulatory fee for Television Satellite Stations that is less than the amount for Commercial Television Stations should not be taken as a signal that any determination has been made with regard to the outcome of that proceeding.

of $30 per license. Thus, we are assessing licensees of Commercial Auxiliary Stations a $30 annual regulatory fee for FY 1995 on a per call sign basis. We are making no changes to the rules for calculating or submitting regulatory fee payments by licensees of facilities in this service category. *See* Guidelines, Appendix at ¶ 25.

k. *International HF broadcast (Short Wave).* 70. This category covers International HF Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on a frequency in the 5,950 Khz to 26,100 Khz range to provide service to the general public in foreign countries. The proposed fees for International HF Broadcast are set forth in the International Service category in the FY 1995 fee schedule.

71. For FY 1995, the revenue requirement for this category is $4,750. Payment units are estimated to be 19 short wave licenses. Dividing the category's revenue requirement by its estimated payment units results in a fee of $250 per license. *See* Appendix E Thus, for FY 1995, we are assessing an annual regulatory fee of $250 per station license. We are making no changes to the rules for calculating and submitting fees by licensees of facilities in this service category. *See* Guidelines, Appendix at ¶ 26.

4. Cable Services

a. *Cable television systems.* 72. This category includes operators of Cable Television Systems, as that term is defined in Section 76.5 of the Commission's Rules, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules.

73. The National Cable Television Association (NCTA), the Small Cable Business Association (SCBA), and the Cable Telecommunications Association contend that our allocation of full-time equivalents (FTEs) to cable television is unsupported and is unduly high. SCBA urges us to exempt small systems from payment of regulatory fees. Finally, NCTA and SCBA contend that we have understated the number of payment units, *i.e.,* cable television subscribers, subject to the fee.

74. We have addressed in paras. 11 through 26 our allocation of FTEs. Therefore, no further discussion of this issue is required here. Further, we find that the Regulatory Fee Schedule adequately considers the financial circumstances of small cable systems by basing the fee payment for cable systems on their number of subscribers so that payments by cable systems reflect their relative size and their relative benefits from our regulation. We have divided the cable system revenue requirement of $29,400,000 by our estimate of 60,000,000 payment units to derive the FY 1995 fee for cable systems of $.49 per subscriber. *See* Appendix F. Therefore, we are assessing a fee of $.49 per cable television subscriber.[20]

75. Payments for cable systems are to be made on a per subscriber basis by community unit determined as of December 31, 1994 as reported on each cable system's 1994 Annual Report of Cable Systems (FCC Form 325). We are making no change in the rules for calculating or submitting regulatory fees by cable system operators. *See* Appendix F for a description of the development of the fee for cable systems, *See also,* Guidelines, Appendix H at ¶ 27.

b. *Cable antenna relay service.* 76. This category includes Cable Television Relay Service (CARS) Stations authorized under Part 78 of the Commission's Rules. These stations transmit television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from which the signals are distributed to the public by a cable television system.

77. SCBA contends that the CARS fee is out of proportion to the benefits received from our regulation of these facilities. Since SCBA has provided no support for its argument, we will give no consideration to an adjustment of the CARS fee. Further, we reject the argument of SCBA that we should exempt small cable systems from the CARS fee. SCBA has not demonstrated that the fee is unreasonable or that small cable systems receive any less benefit from our regulation than other cable systems.

78. Our FY 1995 revenue requirements for CARS is $603,780 and our estimated payment units are 2,082 licenses. Dividing the revised revenue requirements for CARS by our estimated payment units results in a fee of $290 per license. *See* Appendix F. Thus, for FY 1995, we are assessing a $290 regulatory fee per CARS license. We are making no change to the rules for calculating and submitting regulatory fees by CARS licensees. *See* Appendix F for a description of the development of the fee for CARS. *See also,* Guidelines, Appendix H at ¶ 29.

[20] Consistent with our earlier interpretation of congressional intent, we require payment of the cable system regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory Regulatory Fee Schedule. *See FY 1994 Order* at para. 100.

5. Common Carrier Services

79. We have received numerous comments from providers of Common Carrier Services objecting to the amount of the fees proposed for their particular categories of service. Several of these parties complain that the FTEs assigned to the Common Carrier category and the costs apportioned to their particular service category are unduly high, and that the *Notice* miscalculated the estimated payment units for their services. We have discussed our FTE allocations, cost allocations and unit estimates in paragraphs 8 through 23. We will, however, address issues related to cost allocation and payment units where the arguments presented have not been previously considered. *See* Appendix G for a description of the development of the fee for services within the Common Carrier category.

80. The Commission is exercising its authority pursuant to Section 9(b)(3) in order to revise the fees associated with regulation by the International Bureau. Numerous commenters have expressed concern that the proposed fees would not be representative of the costs associated with the regulatory activities of the International Bureau, nor would the proposed fees reflect the benefits provided to the payers of the proposed fees.

81. Section 9(b)(3) provides the Commission authority to adjust the Schedule of Regulatory Fees provided the following two conditions are met: (1) the Comission determines that the Schedule requires amendment to comply with the requirements of paragraph (1)(A), which states, ''The fees assessed under subsection (a) shall be derived by determining the full-time equivalent number of employees performing the activities described in subsection (a) within the Private Radio Bureau, Mass Media Bureau, Common Carrier Bureau, and *other offices of the Commission*. . . ,'' and (2) the basis for changing or reclassifying services in the Schedule reflects additions, deletions, or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

82. The Commission has determined that the reorganization establishing the International Bureau satisfies both of the requirements described above. Specifically, the reorganization was a Commission rulemaking proceeding, as defined in 47 CFR 1.412(b)(5), which resulted in the Commission being able to determine the full-time equivalent number of employees performing regulatory fee-based activities in the International Bureau.

83. Specifically, the Commission will adjust the Common Carrier Fee category so that the total collected from the individual services associated with International Bureau fees [21] totals approximately $8.3 million, which is the estimated regulatory cost associated with the International Bureau.[22] The revisions to the Common Carrier fee category have been made by reallocating the difference between what would have been collected under the International Bureau fees proposed in the *Notice* and $8.3 million to all remaining services in the Common Carrier fee category on a proportional basis.

a. *Public mobile/cellular radio services.* 84. Fees for the Public Mobile and Cellular Radio Services are set forth in the FY 1995 Regulatory Fee Schedule within the Wireless Radio service category. These services include common carriers and others (e.g., cellular radio licensees) offering a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public, under Parts 22 and 24 of the Commission's Rules. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

85. In the *Notice*, we proposed to assess a fee for this service category based upon the total number of telephone numbers or call signs that a licensee provides to its customers. The Regulatory Fee Schedule assessed the fee based on the number of a licensee's subscribers. Reliance on a subscriber count, however, does not fully reflect the benefit of our regulation *i.e.*, usage of channel capacity, because individual subscribers vary in the number of mobile units or telephone numbers utilized. In order to assure that all cellular/mobile units in operation are, in fact, assessable as customers, we are reviving our fee structure to assess the fee based on mobile units or telephone numbers provided by a licensee as a more equitable payment formulation because it better reflects actual usage of our frequency assignments and related benefits of our regulation. Therefore, for FY 1995, we amend our Regulatory Fee Schedule so that each cellular licensee will pay an annual fee based on the number of telephone numbers provided, and each licensee in the Public Mobile Radio Service pays an annual regulatory fee for each mobile unit, including paging units, assigned to its customers, including resellers of its services.

86. A number of commenters [23] argue that our proposal to base the fees on units (telephone numbers or mobile units) rather than subscribers is inconsistent with the Regulatory Fee Schedule developed by Congress. They assert that the change to units is not an adjustment permitted under Section 9(b)(2) or a change pursuant to law or regulation as required by Section 9(a)(3).

87. Congress, however, has authorized the Commission to modify the Regulatory Fee Schedule to ensure that the fees are reasonably related to the benefits of the Commission's regulatory activities. See 47 U.S.C. 159(b)(1)(A). Under Section 9, ''the Commission is required to adjust the fees to reflect proportionate changes in its appropriations, and is permitted through a rule making, to make changes to the Regulatory Fee Schedule, including adding, deleting or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 1188 (1993). Thus, Congress intended that we modify the fee structure in instances where we find that a revision to the Regulatory Fee Schedule better reflects the relative benefits licensees receive from our regulatory activities and achieves a more equitable distribution of the fee burden. We find that assessing fees on the basis of mobile units or telephone numbers, equitably reflects the actual benefit received from the Commission's regulation.

88. Alltel argues the Commission should modify the date for determining fees so that the burden of the fees would be shared by new service providers. It asserts that equity requires that the fee burden be shared by licensees authorized during the year.

89. We recognize that Alltel's suggestion would distribute the fee burden among additional service providers. However, such a system would be difficult to administer and lead to confusion because regulatees are directed to count payment units as of a date certain, and as new regulatees are authorized, would involve utilization of different dates for computing fees for different licensees. Moreover, we do not believe that a calculation date later in the fiscal year would significantly affect the amounts of the fee payments that we are adopting since many new service providers subject to the fee would be in an early start-up phase of their operations and existing providers would have accounted for substantially all their units of payment under the calculation date that we have proposed. In the *FY 1994 Order*, establishing December 31 as the calculation date for regulatees paying fees based upon subscriber lines or circuits, we noted that many regulatees file reports based upon information collected as of that date. 9 FCC Rcd at 5365–66 ¶ 96. In other instances, regulatees calculate subscriber counts as of that date for internal purposes. Reliance on December 31 as a date certain for calculating fees facilitates both the computation of fee payments and our verification that the correct fee payments are submitted. 9 FCC Rcd at 5350, ¶¶ 48–49. Further, since our regulatory fee program is ongoing, new carriers will be subject to payment of fees in the next fiscal year. Thus, we have decided to adopt December 31, 1994, as the date for calculation of fee payments for all mobile regulatees.

90. Frontier and Alltel also argue that cellular and paging licensees are being treated differently from carriers using the interstate network. Frontier asserts that cellular resellers are exempt from the regulatory fee and that this places an unfair burden on facilities-based carriers who must pay for regulatory activities benefitting resellers of mobile services. Also, these parties contend that our treatment of mobile resellers is inconsistent with our proposal to include resellers of interstate services in the fee schedule.

91. We recognize that the fees for mobile service providers are assessed in a manner different from the fee for users of the interstate network and that we are including resellers of interstate services directly in the fee schedule, but not resellers of mobile services. We also recognize that there are substantial equity issues that must be addressed

[21] Specifically: International Circuits, Space Stations, Earth Stations and International Public Fixed Radio Stations.

[22] There are 72 FTEs within the International Bureau that are directly associated with regulatory fee activities. To the number we have added an additional 40%, or 28 FTEs, for the indirect support FTEs as explained in paragraph 8. The resulting cost is $8.3 million (100 FTEs multiplied by $83,000 per FTE).

[23] *See* comments filed by Personal Communications Industry Association (PCIA), Alltel Mobile Communications and Alltel Service Corporation (Alltel), Frontier Cellular Holding, Inc. (Frontier), Mobilmedia Communications, Inc., Vanguard Cellular Systems (Vanguard), Arch Communications Group, and Metrocall, Inc. Vanguard also argues that the computation of the regulatory fee based on units could result in disclosure of commercially sensitive information. To date we have not had FOIA or other requests for access to the information submitted by cellular/mobile carriers with their fee proposals. However, any carrier concerned that the information submitted may be used to its detriment, can request that the Commission protect its submission from routine disclosure to the public.

before assessing resellers a fee, in order to protect them from having their mobile units or telephone numbers double counted. For non-mobile common carriers we are adopting a proposal to assess fees on the basis of gross revenues, and we are protecting resellers from double payments by permitting them to deduct from their gross revenues the payment made to facilities based carriers. In the case of mobile resellers, we do not have the data necessary to structure a fee schedule on the basis of gross revenues or in a manner which would protect mobile resellers from double payments.

However, by revising the Regulatory Fee Schedule to require a fee payment for every mobile unit or telephone number made available by a licensee to a third party, we will collect a fee for each unit made available to a licensee's customers, including resellers. Moreover, to the extent that the regulatory fees are included in the carriers' charges to the resellers, the resellers will be sharing in the regulatory burden.

92. A number of mobile regulatees also assert that their fees are increasing at a disproportionate rate because of the increase in the per unit rate and because of the change in counting from subscribers to mobile units or telephone numbers used. Our modification of the methodology for computing fees was required because reliance on a subscriber count does not fully reflect actual usage of the frequencies we have authorized mobile providers to operate. For FY 1994, regulatees often paid only a nominal $.06 fee for a single subscriber even though that subscriber may have subscribed to numerous mobile units or telephone numbers. Thus, as a result of the fee methodology, fee payments did not necessarily reflect the direct benefit of our regulation to individual licensees. For those regulatees whose fees reflected actual usage, the modification in counting units will not result in a significant increase in fees. However, the fact that other regulatees may be subjected to larger increases is only a reflection of the fact that their prior fees did not reflect the benefits they received and does not establish that they are being subjected to an unwarranted or disproportionate increase in fees.

93. Several parties, including PCIA, Mobile Media Communications, and Airtouch Paging, requested that the Commission establish a separate and lower fee category for regulatees offering one-way paging services. We have reviewed these requests and determined that a reduced fee for Part 22 one-way pagers is appropriate in view of the quality of the channels afforded paging entities versus cellular providers. Pagers are authorized only to transmit one-way data messages whereas cellular providers operate systems providing two-way voice communications. We are also aware that the paging industry is very competitive and generally has low profit margins compared to the cellular industry and to other public mobile services. We have therefore established a reduced annual fee of $.02 per pager for FY 1995. This permitted amendment should provide an equitable cost allocation among cellular and other public mobile licensees and paging licensees based upon their relative market pricing structures while minimizing any adverse impact on the one-way paging industry.

94. Our revenue requirement for FY 1995 for Cellular and Other Public Mobile (non-one way paging) carriers is $3,510,000. The revenue requirement for Public Mobile One Way Pagers is $392,000. Based on the comments of parties, we have also revised the estimated payment units for these services to 19.6 million one way pagers and 23.4 million Cellular/Other Public Mobile units. Dividing the revenue requirement for Cellular/Other Public Mobile by its estimated units results in an annual regulatory fee of $.15 per payment unit.[24] Thus, we will assess a fee of $.15 per mobile unit or telephone number in this service. For one way pagers the resulting fee is $.02 per pager.[25] [26] *See* Guidelines, Appendix H at ¶¶ 30–33.

[24] As we decided in our *FY 1994 Order,* we require licensees in the Air-Ground Radiotelephone Service to pay their fee based upon their number of transceivers leased for operation in aircraft.

[25] PCIA notes that the fees for several categories of service proposed in the *Notice* were the same and questions whether the then-proposed fees were developed pursuant to the statutory scheme or whether the Commission decided on the amount of the fee without regard to Section 9's methodology for developing the fees. Plainly, an examination of the methodology used to calculate the mandatory adjustments required by Section 9 reveals that when fee amounts within the same fee category (e.g., Common Carrier) are pro-rated upward or downward, the existing relationship between each fee is retained. Therefore, two fee amounts within the same fee category having the same dollar value would both have similar values after the pro-rata mandatory adjustment is made.

[26] We will incorporate into our fee payment procedures the substance of Public Notice No. 43189, *Paying Regulatory Fees* (July 8, 1994), requiring public mobile providers to list all their call signs on the Form 159/159C and to distribute their total number of mobile units for each call signs in one of the following ways: (1) Allocate one mobile unit for every call sign, except one, and allocate the remainder of mobile units to the remaining call sign; or (2) determine the average number of mobile units per call sign and use this number of mobile units for each call sign. The filer is responsible for documenting its fee payment.

b. *Domestic public fixed radio service.* 95. The Domestic Public Fixed Radio Service includes stations authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS).[27] We received no comments related to the proposed fee.

96. The FY 1995 revenue requirement for this service is $1,960,000, and the payment units are estimated to be 14,000 licenses. Therefore, we will adopt for Domestic Public Fixed Radio Service licensees a $140 annual regulatory fee per call sign payable on a specified date to be announced by the Commission. Moreover, in response to Southwestern Bell Corporation's request, we will modify our fee payment procedures to permit licensees in the Public Fixed Radio Service to file a single Form 159 stating their number of call signs and the total fee amount with an attached listing of each call sign covered by the fee payment. Licensees with up to 100 call signs may submit a hard copy list with their Form 159. However, we require licensees with greater than 100 call signs to file a data diskette containing their listing of call signs along with a hardcopy Form 159. We are adopting no other change to the rules for calculation and submission of the fee payment by licensees in the Domestic Public Fixed Radio Services. *See* Guidelines, Appendix H at ¶34.

c. *International public fixed radio service.* 97. The International Public Fixed Radio Service (IPFRS) is set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. It includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or H troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. The FY 1995 revenue requirement for this service is $4,000, and the payment units are estimated to be 20 licenses. Thus, we are adopting a regulatory fee for IPFRS licensees of $200 per call sign. We are proposing no

[27] MDS and MMDS are now regulated by the Mass Media Bureau and, therefore, the regulatory fees for these services are shown within the Mass Media category in the FY 1995 fee schedule. *See* Appendix B.

change to the rules for calculating and submitting fees by licensees in the International Public Fixed Radio Services. *See* Guidelines, Appendix H at ¶35.

d. *Earth stations.* 98. Earth stations are set forth in the FY 1995 Regulatory Fee Schedule within the International fee category. The earth station category encompasses *all* domestic and international earth station facilities authorized or registered under Part 25 of the Commission's rules. These facilities include transmit/receive, transmit-only, and receive-only earth stations; Very Small Aperture Terminals (VSATs) operating in the 12/14 GHz frequency bands; Mobile Satellite Earth stations; and equivalent C-band antennas operating in the 4/6 GHz frequency bands authorized pursuant to blanket authority.

99. In Section 9's Schedule of Regulatory Fees, these facilities were grouped into several categories. Within these categories, some fees were assessed on a per meter basis; other fees were assessed on a per 100 antennas basis. For example, in our *FY 1994 Order*, we adopted the Regulatory Fee Schedule's requirement that a higher fee be assessed for fixed satellite earth station antennas of 9 meters or more than for those less than 9 meters. This distinction resulted in the anomaly that antennas performing the same function were subjected to different fees, a fee several thousand percent higher for large earth stations than for small earth stations. To rectify this disparity, we proposed in the *Notice* to exercise our permitted authority to eliminate the dual fee levels for these earth stations. Therefore, we proposed that any earth station antenna in this service category be charged a fee based upon its size as measured in meters in order to eliminate the disparity in fees under the former schedule and to assure that smaller antennas would continue to be subject to a smaller fee requirement than larger antennas.

100. EDS Corporation argues that their small transmit/receive and transmit only earth stations should continue to be assessed fees similar to those charged for earth stations in VSAT networks (a per antenna fee), as Congress prescribed in its fee schedule, instead of fees similar to those for larger transmit/receive, transmit only earth stations (a per antenna-meter fee), as proposed in the *Notice*. EDS contends that since the enactment of Section 9, no change in the regulation of small transmit/receive and transmit only earth stations has taken place that would justify a revision in the manner in which its fees are assessed. In addition, COMSAT Video contends that C-band transmit/receive and transmit only earth stations should be assessed fees distinct from the fees assessed for Ku-band transmit/receive and transmit only earth stations. COMSAT Video questions our estimated payment unit estimates for transmit-receive and receive only earth stations.

101. We reject EDS's argument that we lack the authority to revise the Regulatory Fee Schedule. As noted, Congress specifically provided that we were to adjust the fees to ensure that they are reasonably related to the benefits received. 9 U.S.C. 159(b)(1)(A). We conclude that we cannot find sufficient difference in our regulation of earth stations (regardless of size or intended use) to warrant establishing separate fees for these facilities.

102. For FY 1995, we proposed to modify the Regulatory Fee Schedule for receive-only earth stations by assessing the fee on a per meter basis, in the amount of $120 per meter, regardless of whether a facility was more or less than 9 meters in diameter.

103. The Associated Press (AP) the National Cable Television Association (NCTA), the Cable Telecommunications Association (CATA), Joint Cable Commenters [28] and the Wireless Cable Industry Association (WCIA) object to the substantial increase in fees proposed for receive only earth stations of less than 9 meters. NCTA and the Joint Commenters contend that the proposed fee would amount to as much as a 10,000 percent increase for receive only earth stations smaller than 9 meters in diameter. CATA and WCIA claim that the burden of the increase would fall upon small cable and wireless cable operators in rural areas, unable to share earth stations among systems. Further, CATA and WCIA argue that Congress distinguished between the fees for large and small receive only earth stations in order not to overburden cable and wireless entities.

104. NCTA argues that the assessment for small receive only earth stations is not substantiated by a description of how the assessment was developed. GE American states that our unit estimate for receive only earth stations is low. Further, AP, CATA and NCTA contend that our deregulation of receive only earth stations and, in particular, our policy to permit operators to decide individually whether to register their facilities for interference protection, demonstrates that only a minimal degree of our regulatory activities are involved with regulation of receive only earth stations.

105. In view of the comments received, we have reevaluated our proposed fee for receive only earth stations. We are aware that our regulatory requirements for these facilities have been substantially modified in recent years, notwithstanding the inclusion of receive only earth stations in Section 9(g)'s fee schedule. In particular, we recognize that domestic receive only earth stations are no longer subject to licensing. (International receive only earth stations are currently licensed). Rather, operations of receive only earth stations may register these facilities with us in order to obtain interference protection and other benefits. Further, our review of the resource burden of providing interference protection to receive only earth stations demonstrates to us that regulation of these facilities accounts for an insignificant portion of the costs attributable to these activities. Therefore, we have decided to exercise our authority to make ''permitted amendments'' and to delete receive only earth stations as a service subject to a regulatory fee requirement for FY 1995. *See* 47 U.S.C. § 159(b)(3). Therefore, we will assess no fee for receive only earth stations.

106. In addition, we have received the fee structure in effect in FY 1994 for earth stations and conclude that the current structure is not the most equitable for regulatory fee purposes. As noted, all satellite earth stations require a certain amount of regulatory activity. Commenters have focused on individual elements of our regulatory activities in arguing against the changes in fees for particular types of earth stations. For example, certain classes of earth stations require more international activity than others (*i.e.*, coordination and consultation); other classes of earth stations require more rulemaking and enforcement activity than others (*i.e.*, zoning related matters). Since we do not yet have a cost accounting system capable of assigning the cost of specific regulatory activities to specific classes of earth stations, we find that assessing the fee on a per authorization or registration basis, rather than a per meter or 100 antennas basis is the most equitable method of allocating the regulatory costs assigned to satellite earth stations. Moreover, we find no reasonable basis for charging a per meter fee when it appears that the regulatory costs associated with a five or nine meter antenna are similar and the benefits to the payer are no less at five meters than at nine meters. Consequently, we are eliminating the

[28] The Cable Industries Corp., Multimedia Cablevision, Inc., Providence Journal Company, and Star Cable Associates jointly filed comments.

size distinctions and assessing fees on a per authorization or registration basis.[29]

107. Accordingly, we have revised our estimate of the number of payment units to conform to the number of authorizations or registrations contained in this service category (includes VSATs, mobile equivalents, transmit/receive and transmit only earth stations). As of October 1, 1994, 3,378 authorizations and registrations had been issued. The FY 1995 revenue requirement attributable to all earth stations is $1,114,740. Dividing the requirement requirement by our estimate of 3,378 earth stations results in a fee of $330 per authorization or registration. *See* Appendix G.

e. *Space stations (Geosynchronous).*

108. Geosynchronous space stations are domestic and international satellites positioned in orbit to remain fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis.

109. In addition to issues addressed above relating to FTEs, the satellite parties raise several issues in opposing our proposed space segment fees. Columbia and Panamsat, supported by GE Americom, argue that Comsat is obligated to pay space segment fees for its Intelsat and Inmarsat satellites in addition to the fees it pays for its domestic satellites. Also, Columbia and Panamsat argue that we should base our space segment fee on the number of transponders operated by a licensee rather than its number of operational satellites because transponder usage and bandwidth capacity more rationally reflect the benefits that licensees receive from our regulation. Finally, these parties argue that the number of satellites in operation as of October 1, 1994, the date for calculating fees, is higher than the estimated number of satellites we used to calculate the per satellite fee.

110. We reject the parties' contention that Comsat General must pay fees on a per space station basis for the Intelsat and Inmarsat satellites that it manages. Section 9's legislative history discloses that Congress intended that Comsat General would be subject to a space segment fee only for its licensed operations. Specifically, Congress stated with respect to space station fees that:

> The Committee intends that fees in this category be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will only apply to space stations directly licensed by the Commission under Title III of the Communications Act. Fees will not be applied to space stations operated by international organizations subject to the International Organization Immunities Act, 22 U.S.C. Section 288 et seq.[30]

This language was incorporated by reference in the Conference Report accompanying the 1994 Budget Reconciliation Act, which included the regulatory fee program.[31] Thus Congress did not intend for the Commission to assess a fee per space station for the space segment facilities of Intelsat and Inmarsat. Therefore, we will not require Comsat General to submit fee payments for their satellites. For FY 1996, however, we intend to explore other ways to recover the regulatory costs imposed on the Commission on behalf of Comsat's participation in the Intelsat and Inmarsat programs.

111. Further, we reject the parties' arguments that we should base the space segment fee on transponders aboard operational satellites rather than on the number of operational satellites. Our calculation of fees using space segments rather than transponders is reasonable and reflects Congress' decision to assess satellite fees based on operational satellites. Moreover, Panamsat has provided us with no demonstrable evidence that the costs of regulating the various satellite systems is more closely related to the number of transponders that a satellite carries than to the total number of operational satellites. Nor has Panamsat considered the administrative burden of its proposed fee structure on regulatees subject to the fee and upon our own resources. Because the cost of satellite regulatory activities is reasonably related to the number of operational satellites, we find no basis for modifying our reliance on space stations as payment units.

112. COMSAT General contends that the proposed fee is contrary to the public interest because it will discourage maintenance of older satellites even thought they may remain viable providers of low-cost, full time and occasional use commercial services. COMSAT General further contends that the proposed fee will discourage competitive discounting or exploitation of innovative satellite technologies and is harmful to consumers of satellite services, particularly start-up and small businesses, because it results in higher prices for services.

113. We reject Comsat General's contention that our fees may have an adverse impact on innovation in the satellite and other industries by precluding the use of older satellites. Newer satellites offer the public access to faster, more efficient, and more advanced telecommunications services. Providing an incentive to maintain older, less efficient satellites may have a negative impact on the end users of satellite services. Newer satellites are available to perform any service that Comsat general may have intended for older generation satellites. Although Comsat General states that older satellites ''*may* remain viable as providers of low-cost providers of full time and occasional use commercial services'', they provide us no documentation that the cost per user to least capacity on a newer, high capacity satellite that can serve more customers.

114. Finally, several satellite parties contend that our estimate of payment units for the satellite fee is flawed because we did not calculate the number of satellites in operation on October 1, 1994, the date for the calculation of fees. We have reviewed our records and find that 39 satellites were operational on October 1, 1994. The revenue requirement for regulation of satellites is $2,925,000. Dividing this by 39 operational satellites yields a fee of $75,000. *See* Guidelines, Appendix H at ¶40.

f. *International bearer circuits.*

115. Regulatory fees for international bearer circuits are set forth in the International Service category in the FY 1995 Regulatory Fee Schedule. The fee proposed in the *Notice* is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Also as proposed in the *Notice,* we are modifying our requirements for payment of the fee for bearer circuits by private submarine cable operators to require that they pay fees for circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order* at 5367. As provided in the FY 1995 fee schedule, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps

[29] An ''authorization'' is defined on a per call sign basis. A single call sign may either authorize one earth station antenna, or may provide a ''blanket authorization'' covering several earth station antennas.

[30] H.R. Rep. No. 102–207, 102d Cong., 1st Sess. 26. Both Intelsat and Inmarsat are subject to the International Organizations Immunities Act. *See* Exec. Order No. 11,996, 42 FR 4331 (1977); Exec. Order No. 12,238, 45 FR 60,877 (1980).

[31] Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

circuit equivalent of a 2.048 Mbps circuit is thirty 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee.

116. In the *Notice* we estimated the volume of active 64 Kbps circuits or equivalent to be 62,000. AT&T, supported by Sprint, contends that our estimate of the number of bearer circuits subject to the fee was low. We have re-examined our estimate of the number of bearer circuits subject to a fee as of October 1, 1994. Based on this re-examination, we have revised the number of bearer circuits to 125,000. The FY 1995 revenue requirement for this service is $500,000. Dividing the revenue requirement for this service by the number of active bearer circuits results in a fee of $4.00 per circuit.

117. For purposes of calculating equivalent units subject to the bearer circuit fee, we will assess fees as follows:

Analog television channel, size in MHz	No. of equivalent 64 Kbps, circuits
36	630
24	288
18	240

See Appendix G. for a description of the development of the fees for international bearer circuits; *see also* Guidelines, Appendix H at ¶41.

g. *Inter-exchange and local exchange carriers, competitive access providers, pay telephone providers, and other non-mobile providers of interstate service.*

118. Inter-Exchange Carriers (long distance telephone companies) and Local Exchange Carriers (local telephone operating companies) provide commercial and private residential telephone service.

119. In the *Notice*, we proposed to require a regulatory fee payment from inter-exchange carriers (IXLs), local exchange carriers (LECs), and competitive access providers (CAPs), consistent with our FY 1994 fee schedule. Also, we proposed to add to the schedule all domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched services, interstate access, special access, and alternative access services. We stated that the fee requirement would apply to carriers using their own facilities or reselling facilities and services of other carriers or telephone holding companies, including companies other than traditional telephone companies that provide interstate access service to long distance companies and other customers.

120. In addition, we proposed to modify our methodology for assessing fees upon these carriers generally, including CAPs and resellers, by basing the fee upon the number of customer units, *i.e.*, the number of users of a service. As in FY 1994, inter-exchange and local exchange carriers would be required to calculate their total fee payments based upon their total number of presubscribed lines (PSLs). In the alternative, we proposed to assess fees on providers of interstate services based on their minutes of interstate service in calendar year 1994. For each methodology, we proposed the use of certain equivalency assumptions in recognition that several categories of service providers would be unable to calculate their fees based on either PSLs or minutes of use (MOUs). Moreover, we invited interested parties to file comments proposing ''the most efficient and equitable method for assessment of fees.'' See *Notice* at paragraph 58.

121. Numerous parties submitted comments opposing our proposal to add resellers and other users of the interstate network to the fee schedule.[32] The parties argue that Section 9 authorizes us to add services to the Regulatory Fee Schedule only if a regulation or change in the law so dictates. *See* 47 U.S.C. § 159(b)(3). Thus, in the view of these parties, no such rule making or change in the law has occurred since the enactment of Section 9 to justify the addition of resellers to the fee schedule. Further the interested parties contend that the Regulatory Fee Schedule precludes inclusion of resellers because it specifically limits the fees to providers of ''presubscribed lines,'' and resellers do not provide presubscribed lines. *See* 47 U.S.C. § 9(g). Finally, the commenters argue that the imposition of a fee on resellers is contrary to our procompetitive and deregulatory policies, particularly since resellers, in their view, are subject to minimal regulation and derive little benefit from our regulation.

122. We disagree with the argument that our regulation of resellers is so minimal that these carriers should not be subject to a fee requirement. As we observed in the *Notice*, we required facilities based carriers to remove any restrictions on the resale and sharing of private line facilities and services and our oversight of the interstate communications market has fostered the growth of the strong resale market that currently exists.[33] Nothing that the parties have presented persuades us that their regulation is so minimal or their benefits so attenuated that these carriers should not be subject to a fee. Resellers are subject to tariffing requirements and are obligated to provide their services pursuant to just, reasonable and nondiscriminatory rates and practices in accordance with Sections 201 and 202 of the Act. Their rates and services are also subject to our review pursuant to Section 208 of the Act.

123. In addition, we reject the argument that Section 9 requires a rule making other than the instant proceeding to add services to the Regulatory Fee Schedule. Nor do we believe that the fee schedule's provision that we assess fees for FY 1994 based upon PSLs amounts to a congressional directive that we limit our assessment of fees to interstate service providers capable of calculating their fees by a PSL count. 47 U.S.C. § 159(g). Section 9's legislative history establishes that we ''are permitted through a rule making, to make changes to the fee schedule, including adding, deleting, or reclassifying services when the Commission determines that such changes are necessary to ensure such fees are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' [34]

Thus, our inclusion in the Regulatory Fee Schedule of resellers and other

[32] Parties opposed to adding resellers to the Regulatory Fee Schedule include America's Carriers Telecommunications Association (ACTA), Airtouch, Avis Rent A Car (AVIS), Competitive Telecommunications Association (Comptel), GTE Service Corporation (GTE), Hertz Technologies, Inc., LDDS Communications, Inc., and the Telecommunications Resellers Association (TRA). The American Public Communication Counsel (APCC), a trade association consisting, in part, of pay telephone operators, while not opposing inclusion of independent pay phone (IPP) operators in the fee schedule, argues that the fee for OPPs must be reasonable, fairly allocated fee and imposed on all payphones, including payphones operated by the local exchange carriers (LECs).

[33] *See Resale and Shared Use of Common Carrier Services*, 60 FCC Rcd 2d 588, 600 (1977) (In allowing resellers to obtain lines from facilities based carriers, we declared that '''[resale carriers] * * *', whether they be brokers or value added carriers * * *, are equally subject to the requirements of Title II of the Communications Act.''); *see also American Tel. and Tel. Co.* v. *F.C.C.*, 978 F.2d 727, 735 (D.C. Circuit 1992) (finding that resellers and other nondominant carriers must file tariffs and offer their services pursuant to just, reasonable and nondiscriminatory rates and practices pursuant to Sections 201 and 202 of the Act.) Resellers currently are subject to filing fees pursuant to Section 8 of the Communications Act.

[34] Conference Report H. Rept. No. 213, 103d Cong., 1st Sess. 499 (1993).

carriers using the interstate network is fully consistent with Section 9's provisions.

124. Many common carriers, including inter-exchange carriers, local exchange carriers, resellers, CAPs, and pay telephone operators filed comments addressing our proposal to revise our methodology for assessing fees based on customers units or, in the alternative, on MOUs. In addition, several commenters responded to our invitation to propose a method for assessing regulatory fees on common carriers by urging that we assess the fee based upon the gross revenues of the subject carriers.

125. In describing our proposed methodology, we stated that fees would be assessed based upon the number of customer units. We defined customer units for LECs and pre-selected IXCs as their total number of presubscribed lines, as defined by Section 69.116 of the rules. 47 CFR 69.116. For any other switched services, such as MTS, WATS, 800, 900 and operator service not billed to the number from which the call is placed, the number of units would equal the number of billing accounts less those already associated with those presubscribed lines reported by the carrier. For non-switched service providers, including service provided by CAPs, special access, and private (alternative access) line providers, the number of customer units would be based on the total capacity provided to customers measured as voice equivalent lines. For this purpose, 4 Khz or 64 Kbps equivalents would equate to one voice equivalent line. We proposed to assess the fee for pay phone operators by their number of units based upon the number of pay telephones used for pay telephone compensation.

126. The *Notice*'s alternative fee structure based fee on a carrier's number of MOUs of interstate service in calendar year 1994. For access service provided by local exchange carriers, interstate minutes would equal the number of originating and terminating access minutes. For interstate service subject to access charges, the number of minutes would equal the number of originating and terminating access minutes. For other interstate services billed based on timed usage, the number of minutes would equal the number of billed minutes. For interstate services not billed on the basis of timed usage, minutes would be estimated as the billed revenue in dollars times ten.

127. Several commenters support our proposed assessment of carrier fees based upon customer units.[35] These parties contend that the customer unit methodology parallels the existing fee structure, under which LECs have planned and budgeted for their payments of the fees, and that a count of presubscribed access lines represents both an equitable measure of a carrier's relative market presence and a relatively stable measure. Also, they favor the proposal because its methodology forms the basis for calculation of Universal Service Fund requirements, familiar to the carriers, and because its calculations are simple and straightforward.

128. Other parties disagree that the customer unit approach is the methodology best suited to assessing regulatory fees.[36] These parties claim that allocation mechanisms based on PSLs do not accurately reflect the various interexchange carriers' shares of switched services. According to AT&T, our FY 1994 PSL methodology failed to assess fees upon inter-exchange carrier's in a nondiscriminatory manner because AT&T's customers average significantly less usage and per line revenue than customers of other IXCs and, therefore, discourages its competitors from seeking out and serving low volume users. Further, several carriers state that our proposed equivalency ratios for carriers that cannot calculate their fees by PSLs do not accurately reflect the participation of these carriers in the market.

129. NYNEX and America's Carriers Telecommunications Association (ACTA) support assessing the fee for carriers based on MOUs, as described in the *Notice*'s alternative methodology. NYNEX asserts that the MOU approach better reflects the relative size of each carrier's customer base and its regulatory benefits than do customer units and, thus, would ensure that every carrier pays an equitable share of regulatory costs. Further, NYNEX contends that MOU data is easy to administer and verify and avoids unnecessary reliance on assumptions, calculations and projections. ACTA favors adoption of the MOU approach if resellers are subjected to the fee because, in its view, assessment of the fee by MOUs has the advantages of lower administrative costs and resource burdens since calculation of the fee does not depend on a line count by the LECs or NECA.

130. Several carriers oppose reliance on MOUs due to the large fluctuations in minutes of use which may lead to anomalies that distort the measure of a company's market presence and risk imposing an unfair burden of fees or a windfall in reduced fees for reasons other than a carrier's actual market size.[37] Opponents points out that many LEC services, such as Special Access facilities sold to inter-exchange carriers, are not measured on a minutes of use basis. In this connection, the parties contend that a methodology based on MOUs would be difficult to administer because it relies on complex assumptions in order to calculate the fees for services that are not billed on a time usage basis. Several parties contend that our proposal to rely upon network usage assumptions in assessing fees for competitive access providers will result in excessive and unjustified fees from these carriers.

131. In response to our invitation to propose efficient and equitable methodologies for assessing the carrier fee several commenters support adoption of a methodology based upon a carrier's gross interstate revenues.[38] These parties contend that fees based on a multiplier of each carrier's total gross interstate revenues would result in a fair allocation of costs in as competitively neutral a manner as possible. Further, they argue a gross revenue assessment methodology permits dispensing with assumptions or projections, necessary to the implementation of the customer unit and MOU methodologies. Moreover, they state that gross interstate revenues are widely reported and are readily verifiable by reference to corporate tax filings.

132. Several parties support a revenue-based fee calculation because it would permit the assessment of fees on the basis of data that could be compiled by carriers in a manner similar to our methodology for funding the Telecommunications Relay Service (TRS). NECA states that the TRS model would ensure that the carriers subject to the fee would be equitably charged through use of an interstate revenue

[35] Commenters supporting assessing the fee by customer units include Bell Atlantic, MCI Telecommunications Corporation (MCI) and Sprint Corporation (Sprint). In addition, Allnet Communications Services, Inc. (Allnet), Avis, Hertz and TRA support assessing the fee by customer units if resellers are added to the schedule.

[36] Parties opposing assessing the fee by customer units include AT&T, LDDS, MFS, SBC and US West. Comptel opposes levying the fee on operator service providers (OSPs) based upon ''billing accounts'' because, in its view, the methodology proposed in the *Notice* would result in a fee for OSPs higher than the fee imposed on carriers for which fees are based upon the number of presubscribed lines.

[37] Parties opposed to assessing the fee based upon MOUs include Alltel, AT&T, Bell Atlantic, LDDS, MCI, MFS, National Exchange Carriers Association (NECA), Pacific Bell and Nevada Bell, and SBC.

[38] Parties that support reliance on a methodology to assess the fee based on gross interstate revenues include Alltel, Ameritech, AT&T, Cablevision Lightpath, GTE Service Corporation (GTE), MFS, NECA, National Telephone Cooperative Association (NTCA), SBC, Time Warner, U S West, and Teleport Communications Group Inc. (Teleport).

basis, easily administered and based on externally verifiable data. Further, according to NECA, the TRS mechanism would permit the allocation of fees to special access services without administrative difficulty because exchange carriers could base their fees on submitted TRS data. Resellers supporting assessment of the fee by gross revenues urge that we permit carriers to reduce their fee payments by the amount that they pay to other carriers for facilities and services in order to avoid double payment of the fee.

133. MCI and Sprint oppose assessing fees based on gross interstate revenues. MCI contends that the revenue method is flawed because it is the byproduct of a carrier's minutes of use and, therefore, may fluctuate greatly and be unrepresentative of a carrier's market presence. For its part, Sprint contends that the term ''gross revenues'' is open to several definitions and that revenue figures are more subject to revision than presubscribed line counts that could necessitate delay, or shortfalls, in the collection of fees.

134. After considering the arguments of the many commenters in this proceeding, we have decided to adopt a gross revenues methodology for assessing carrier fees. A revenue based allocation will effectively spread the cost recovery burden of the fee requirement in proportion to the benefits realized by those carriers subject to our jurisdiction. We find that assessing fees by interstate gross revenues is reasonably related to the benefits of the regulation that these carriers receive. Properly administered, a gross revenues methodology will ease administrative burdens of carriers in calculating fee payments, provide reliable and verifiable information upon which to calculate the fee and equitably distribute the fee requirement in a competitively neutral manner. Interstate revenues are widely reported and more easily verifiable than customer units or MOUs and, therefore, avoid the need for burdensome reporting requirements. A revenue based methodology avoids the calculation problems inherent in both the customer unit and minutes of use alternative and permits the assessment of fees without any need to rely upon assumptions and projections.

135. We will require non-mobile common carriers, including resellers, that provide interstate telecommunications services to calculate their fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for carriers to calculate their contributions to the TRS fund.[39] Interstate revenue data is already reported to NECA due to its role as administrator of the TRS fund.[40] In order to avoid imposing a double payment burden on resellers, we will permit interexchange carriers to subtract from their reported gross interstate revenues any payments made to underlying carriers for telecommunications facilities or services. This would include payments for interstate access services. It should be emphasized that the assessment and collection of regulatory fees is a Commission activity, totally separate and apart from TRS funding. However, we intend that carriers subject to payment of regulatory fees calculate and file their fees consistent with the TRS methodology, as modified by Public Notice to be published in the **Federal Register.** The FY 1995 revenue requirement is $46,310,880, and the total TRS revenue is estimated to be $52,626,000,000, resulting in a fee of 0.00088 per TRS revenue dollar.[41] *See* Guidelines, Appendix H at ¶¶42–44.

136. On October 7, 1994, the Common Carrier Bureau, on its own motion, issued a waiver permitting price cap regulated common carriers to treat the initial assessment of regulatory fees and any subsequent changes in the level of the fees paid, either as a result of Commission modification of the fee schedule, or due to increases or decreases in the number of presubscribed or access lines on which the fees must be paid, as an exogenous cost by making appropriate adjustments to their price cap indexes. *Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Act,* 9 FCC Rcd 6060 (Com. Car. Bur., 1994), *Erratum,* 9 FCC Rcd 6487 (Com. Car. Bur., 1994). MCI Telecommunications Inc. (MCI) filed a petition for reconsideration of that decision on November 7, 1994. In that petition, as well as in comments in this proceeding, MCI requests that the Commission reverse the Bureau regulatory fees order and require LECs to file for a waiver of the exogenous costs rules. In support of its petition, MCI alleges that the Common Carrier Bureau failed to follow Commission procedures requiring the LECs to file for waivers of the exogenous cost rules, shifted the burden of proof from the LECS, lacked a record on which to make a decision, and prejudged the petitions for reconsideration that were filed on the original regulatory fees order. Several LECs opposed the MCI petition.

137. MCI has not presented any evidence that would undermine the Bureau's conclusion that the Section 9 regulatory fees meet our criteria for exogenous cost treatment. As explained in the Bureau order, regulatory fees imposed pursuant to Section 9 of the Act are a legislatively-imposed charge on telecommunications common carriers, the imposition of which is beyond the control of the carrier. Moreover, MCI has not shown that the grant of the waiver *sua sponte* violates any Commission rules or procedures. In fact, Section 1.3 of the Commission's rules specifically authorizes grant of waivers *sua sponte.* Accordingly, MCI's petition seeking reconsideration of the Bureau's order is denied. In addition, we take this opportunity to clarify that carriers subject to price caps may file tariffs reflecting the effects of Commission-mandated changes in the regulatory fee schedule after the annual tariff filing is due. *See LEC Price Cap Performance Review* at para. 317.

B. Procedures for Payment of Regulatory Fees

138. Generally, as proposed in the *Notice,* we are retaining the procedures established in our *FY 94 Order* for the payment of regulatory fees. Consistent with Section 9(f) of the Act, we are again providing for three categories of fee payments, based upon the category of service for which the fee payment is due and the amount of the fee to be paid. 47 U.S.C. § 159(f). The fee categories are (1) ''standard'' fees, (2) ''large'' fees, and (3) ''small'' fees.

1. Annual Payments of Standard Fees

139. Standard fees are those regulatory fees that are payable in full on an annual basis. Payers of standard fees are not required to make advance payments for their full license term. All standard fees are payable in full on the date we establish for payment of fees in their regulatory fee category. The payment dates for each regulatory fee category will be announced by public notice in the **Federal Register** following the termination of this proceeding.

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[39] *See Telecommunications Relay Services,* 8 FCC Rcd 5300 (1993), 58 FR 39671 (1993).

[40] Pursuant to our *FY 1994 Order,* NECA acted as our payment agent for approximately 800 exchange carriers who elected to make their fee payments through NECA. We are instructing the Managing Director to determine what, if any, assistance NECA may provide in the collection of regulatory fees for FY 1995.

[41] For FY 1995, we are limiting the use of gross revenues to assess fees on providers of communications services, including resellers, using the interstate network. It is our intention to monitor and analyze the reliance on gross revenues, and if our experience shows that this methodology results in an equitable and readily administered fee structure, we will consider reliance on gross revenues as the mechanism for determining fees for other carriers, including mobile carriers, for FY 1996 and thereafter.

2. Installment Payments for Large Fees

140. Our *Notice* proposed that regulatees in any category of service with a payment due of $12,000 or greater would be eligible to pay their fees in two installments. However, as a practical matter since the time for collecting fees will be extremely limited, regulatees subject to a fee will be required to submit their fees on a single date. In most instances, the requirement to submit a single payment should work no hardship since regulatees will have had no less than ninety days notice of the amount of their fee requirement and the use of these funds throughout substantially the entire fiscal year.[42]

3. Advance Payments of Small Fees

141. As proposed in the *Notice,* we will again treat regulatory fee payments by certain radio licensees as small fees subject to advance payments. Advance payments will be required from licensees of those services that we decided would be subject to advance payments in our *FY 1994 Order*.[43] Payers of advance fees will submit the entire fee due for the full term of their licenses when filing their initial, reinstatement or renewal application. Those subject to the fee must pay the amount due for the current fiscal year multiplied by the number of years in the term of their requested license. The payor would not be subject to the payment of a new fee until filing an application for renewal or reinstatement of the license. Thus, payment for the full license term would be made based upon the regulatory fee applicable at the time the application is filed. Refunds will not be made in cases where the fee for a service is lower for FY 1995 than the fee paid under the FY 1994 fee schedule. The Commission will announce by public notice in the **Federal Register** the effective date for the payment of small fees pursuant to the FY 1995 fee schedule.

4. Timing of Standard Fee Calculations and Payment Dates

142. As noted, the date for payment of standard fees will be published in the **Federal Register**. For licensees, permittees and holders of other authorizations in the Common Carrier, Mass Media, and Cable Services, whose fees are not based on a subscriber, unit or circuit count, fees should be submitted for any authorization held as of October 1, 1994. As in our *FY 1994 Order,* we are establishing October 1 as the date to be used for calculating standard fees since it is the first day of the fiscal year and, therefore, current licensees subject to the fees would have benefited from our regulatory activities from the beginning of the period covered by the payment.

143. In the case of regulatees whose fees are based upon a subscriber, unit or circuit count, the number of a regulatee's, subscribers, licenses or circuits on December 31, 1994, will be used to calculate the fee payment. We have selected the last date of the calendar year because many of these entities file reports with us as of that date. Others calculate their subscriber numbers as of that date for internal purposes. Therefore, calculation of the regulatory fee as of that date will facilitate both an entity's computation of its fee payment and our verification that the correct fee payment has been submitted.[44]

C. Ordering Clauses

144. Accordingly, it is ordered that the rule changes as specified below are adopted.

145. It is further ordered that the rule changes made herein will become effective September 18, 1995. This action is taken pursuant to Sections 4(i), 4(j), 9, and 303(r) of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i) and 154(j) and 159 and 303(r).

146. It is further ordered that the petition for reconsideration filed by MCI Telecommunications Inc. is denied.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Communication common carriers, Radio, Telecommunications, Television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix A—Regulatory Flexibility Analysis

Need and Purpose for This Action

This *Report and Order* adopts a Schedule of Regulatory Fees in order to collect $116,400,000, the amount that Congress has required the Commission to recover through regulatory fees for FY 1995. The *Report and Order* seeks to ease the burden of compliance with the fee requirement by increasing estimated payment units, where appropriate, and by revising methodologies for assessing fees to better assure that fee payments are reasonably related to the benefits that regulatees derive from the Commission's regulation. The Commission has also reduced the threshold payment amounts for eligibility for installment payments.

Summary of Comments.

America's Carriers Telecommunications Association (ACTA) argues that proposals set forth in the *Notice of Proposed Rulemaking* would adversely impact on resale carriers, contending that the proposed fee would double the fee for interstate exchange carriers, including resellers and other carriers newly subject to the fee. Further, ACTA contends that resales carriers would be subject to a ''double fee payment'' because resellers would pay the fee directly and also be charged the fee by facilities-based carriers from whom they obtain facilities and services.

Proposals Adopted

In response to comments by numerous parties, the Commission rejected the methodologies for assessing fees for interstate carriers set forth in the *Notice of Proposed Rulemaking.* Instead, the Commission has adopted a methodology for assessing fees based upon a carrier's gross interstate communications revenues, similar to the method that the Commission adopted for calculating carrier contributions to the fund for the Telecommunications Relay Services (TRS). The Commission found that the TRS methodology provides an efficient and equitable mechanism for assessing fees. Carriers subject to the fee would not be unduly burdened because they already report the information needed to calculate the fee to the National Exchange Carriers Association (NECA), the administrator of the TRS fund. Moreover, the Commission has eliminated the ''double fee payment'' of concern to ACTA by permitting resale carriers to subtract from their reported gross revenues any payments made for facilities and services to facilities-based carriers.

Appendix B—FY 1995 Schedule of Regulatory Fees

Fee category	Annual regulatory fee
Wireless Radio	
Land Mobile (per license) 220–222 Mhz, above 470 Mhz, Base Station and SMRS) (47 CFR Part 90)	6
Microwave (per license) (47 CFR Part 94)	6
Interactive Video Data Service (per license) (47 CFR Part 95)	6
Marine (Ship) (per station) (47 CFR Part 80)	3

[42] Section 8(b)(4)(B) provides for notification to Congress ninety days before permitted amendments to the Schedule of Regulatory Fees become effective. 47 U.S.C. § 159(b)(4)(B).

[43] Advance payments are required from applicants for new, renewal and reinstatement licenses in services which pay annual fees of $6 or less and are listed in the Wireless Radio category of the Regulatory Fee Schedule. See Appendix B.

[44] Cable systems should calculate their FY 1995 regulatory fees using the subscriber data to be submitted to the Commission in their 1994 Annual Report of Cable Television Systems (FCC Form 325). Accordingly, their number of subscribers will not necessarily be based on December 31, 1994, but rather on ''a typical day in the last full week'' of December 1994. (*See* FCC Form 325 Instructions).

Fee category	Annual regulatory fee
Marine (Coast) (per license) (47 CFR Part 87)	3
General Mobile Radio Service (per license) (47 CFR Part 95)	3
Land Mobile (per license) (all stations not covered above)	3
Aviation (Aircraft) (per station) (47 CFR Part 87)	3
Aviation (Ground) (per license) (47 CFR Part 87)	3
Amateur Vanity Call Signs (per call sign) (47 CFR Part 97)	3
Cellular (per unit) (47 CFR Part 22)	.15
Public Mobile Radio (per unit) (47 CFR Part 22)	.15
Public Mobile One-Way Paging (per unit) (47 CFR Part 22)	.02
Mass Media	
AM Radio (47 CFR Part 73):	
Class A	1,120
Class B	620
Class C	250
Class D	310
Construction Permits	125
FM Radio (47 CFR Part 73):	
Classes C, C1, C2, B	1,120
Classes A, B1, C3	745
Construction Permits	620
TV (47 CFR Part 73) VHF Commercial:	
Markets 1–10	22,420
Markets 11–25	19,925
Markets 26–50	14,950
Markets 51–100	9,975
Remaining Markets	6,225
Construction Permits	4,975
TV (47 CFR Part 73) UHF Commercial:	
Markets 1–10	17,925
Markets 11–25	15,950
Markets 26–50	11,950
Markets 51–100	7,975
Remaining Markets	4,975
Construction Permits	3,975
Satellite Television Stations (All Markets)	620
Construction Permits—Satellite Television Stations	225
Low Power TV, TV/FM Translators & Boosters (47 CFR Part 74)	170
Broadcast Auxiliary (47 CFR Part 74)	30
Multipoint Distribution Service (per call sign) (47 CFR Part 21)	140
Cable Television	
Cable Antenna Relay Service (47 CFR Part 78)	290
Cable Television Systems (per subscriber) (47 CFR Part 76)	.49
Common Carrier	
Inter-Exchange Carrier (per revenue dollar)	.00088
Local Exchange Carrier (per revenue dollar)	.00088
Competitive Access Provider (per revenue dollar)	.00088
Operator Service Provider/Pay Telephone Operators (per revenue dollar)	.00088
Resellers (per revenue dollar)	.00088
Other Interstate Providers (per revenue dollar)	.00088
Domestic Public Fixed (per call sign) (47 CFR Part 21)	140
International	
Earth Stations (47 CFR Part 25):	
VSATs/Equivalent C-Band/Mobile Earth Stations (per authorization or registration)	330
Transmit/Receive and Transmit Only Earth Stations (per authorization or registration)	330
Space Stations (per operational station in geosynchronous orbit) (47 CFR Part 25)	75,000
International Circuits (per active 64KB circuit)	4
International Public Fixed (per call sign) (47 CFR Part 23)	200
International (HF) Broadcast (47 CFR Part 73)	250

Appendix C—How Full Time Equivalents (FTEs) and Fee Category Cost Allocations Were Calculated

(1) FTE allocations represent how the Commission anticipates FTEs will actually be spent during the course of the fiscal year.[45] Many factors influence how FTEs are actually employed during the year, including varying rates of attribution, speed of hiring new and replacement staff, the use of part time or temporary employees in lieu of permanent staff, changing Commission priorities, and reorganizations and other activities requiring a reallocation or reassignment of staff. The FTE allocations used in the fee development process were updated as of December 1994 to reflect a number of personnel reassignments made incident to recent reorganizations within the Commission. The impact on the fee development process by the reorganizations is negligible since they have not significantly changed the type of work the reassigned staff is performing.[46]

(2) Only the Commission's enforcement, policy and rulemaking, international, and user information activities are covered by the regulatory fee program.[47] Of the Commission's total ceiling of 2,271 FTEs, 846 FTEs are directly assigned to the agency's primary operating bureaus to perform enforcement, policy and rulemaking international, and user information activities. An additional 560 FTEs have been identified by agency officials as supporting these feeable activities.[48] The result of our FTE allocations are as follows:

Fee Category	Direct FTEs	Support FTEs	Total FTEs
Mass Media	152	101	253
Common Carrier	415	274	689
Private Radio	62	41	103
Cable Services	217	144	361
Total	846	704	1406

(3) The total of the costs to be offset by regulatory fees in FY 1995 is $116,400,000. Each fee category (e.g., cable services) was allocated its share of regulatory fee activity costs based upon the ratio of its FTEs to the total number of FTEs allocated to all regulatory fee categories. The results of this allocation of costs are shown below:

Fee Category	FTEs	Regulatory Fee Percentage[49]	Cost allocation (in millions)
Mass Media	253	18.0	$21.0
Common Carrier	689	49.0	57.0
Private Radio	103	7.3	8.5
Cable Services	361	25.7	29.9
Total	1406	100.00	116.4

[49] These percentages represent the FTEs associated with regulatory fees only. As a percent of all FCC FTEs, the regulatory fee FTEs make up the following percentages: Mass Media (11.1%), Common Carrier (30.3%), Private Radio (4.5%) and Cable Services (15.9%).

Appendix D—Development of Private Radio Services Regulatory Fees

Activity Cost Allocation: The Private Radio Activity was allocated 7.3% (103 FTEs) of the total 1,406 FTEs associated with all

[45] It should be noted that FTE allocations are year-end estimates and thus represent projected work time of existing staff as well as new and replacement staff yet to be hired. The Office of Management and Budget (OMB) has established a ceiling of 2,271 FTEs for the Commission for FY 1995.

[46] The Commission has chosen to retain, for fee determination purposes, the fee classifications (i.e., Private Radio, Common Carrier, Cable Services and Mass Media) contained in 47 U.S.C. Section 159. Although we believe that we have authority to change the classifications to align them more closely with our current organizational structure, we wanted to prevent any adverse impacts to the schedule brought about solely by such a classification change.

[47] The regulatory fee program encompasses a total of 1,406 FTEs or 61.9% of the agency's total FTEs. The agency's Authorization of Service, Legal Services and Executive Direction Activities cover an additional 865 FTEs. See Section III (A) for a discussion of how FTEs were estimated. Authorization of Service regulatory costs are recovered pursuant to Section 8 of the Communications Act.

[48] These support activities include a proportionate share of field operations, engineering and technology and certain general program support staff FTEs.

regulatory fee activities.[50] The same percentage (7.3%) was applied to total regulatory fee activity costs ($116.4 million times 7.3%=$8.5 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #1 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Private Radio Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting revenues in these categories totaled approximately $21.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in excess collections of $13.2 million ($21.7 million minus $8.5 million), Private Radio fees for FY 1995 needed to be multiplied by 39% ($8.5 million divided by $21.7 million=39%)[51] so that revenue would better approximate the $8.5 million cost allocation for this Activity. Table #1 below shows revenue requirements that were computed for each fee category within the Private Radio Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the applicable license term and then divided that result by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Private Radio Activity.

TABLE #1

Category	Revenue requirement	Divided by license term (Yrs)	Divided by payment volume	Equals new fee[52]
Land Mobile (220–222 MHz, 470 MHz and above, unless otherwise noted)	$396,390	5	13,213	6
Microwave	193,200	5	6,440	6
IVDS	43,500	5	1,450	6
Marine (Ship)	5,070,420	10	169,014	3
GMRS	41,775	5	2,785	3
Land Mobile (Other)	1,396,275	5	93,085	3
Aviation (Aircraft)	1,130,430	10	37,681	3
Marine (Coast)	41,955	5	2,797	3
Aviation (Ground)	39,900	5	2,660	3
Amateur Vanity Call Signs	840,000	10	28,000	3
Total	8,500,000			

[52] Fees are rounded to the nearest dollar. On subsequent tables the fees have been rounded pursuant to the requirements of 47 U.S.C. § 159.

Appendix E—Development of Mass Media Services Regulatory Fees

Activity Cost Allocation: The Mass Media Activity was allocated 18.0% (253 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[53] The same percentage (18.0%) was applied to total regulatory fee activity costs ($116.4 million times 18.0% = $21.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #2 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Mass Media Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $16.9 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $4.1 million less than required ($21.0 million minus $16.9 million), Mass Media fees for FY 1995 needed to be adjusted upward by 24.6% ($4.1 million divided by $16.9 million=24.6%)[54] so that revenue would better approximate the $21.0 million cost allocation for this Activity. Table #2 below shows revenue requirements that were computed for each fee category within the Mass Media Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Mass Media Activity.

TABLE #2

Category	Revenue requirement	Divided by payment volume	Equals new fee
AM Radio (Class A)	$86,240	77	1,120
AM Radio (Class B)	1,060,820	1,711	620
AM Radio (Class C)	258,250	1,033	250
AM Radio (Class D)	657,200	2,120	310
AM Radio (Construction Permit)	9,875	79	125
FM Radio (Classes C, C1, C2, B)	2,778,720	2,481	1,125
FM Radio (Classes A, B1, C3)	1,926,570	2,586	745
FM Radio (Construction Permit)	435,860	703	620
VHF TV (Mkt 1–10)	964,060	43	22,420
VHF TV (Mkt 11–25)	1,135,725	57	19,925
VHF TV (Mkt 26–50)	1,166,100	78	14,950
VHF TV (Mkt 51–100)	1,007,475	101	9,975
VHF TV (Remaining Mkts)	1,045,800	168	6,225
VHF TV (Construction Permit)	54,725	11	4,975

[50] Represents 4.5% of all FCC FTEs.

[51] Actual percentage is 39.2368026%.

[53] Represents 11.1% of all FCC FTEs.

[54] Actual percentage is 24.5691982%.

TABLE #2—Continued

Category	Revenue requirement	Divided by payment volume	Equals new fee
UHF TV (Mkt 1–10)	1,541,550	86	17,925
UHF TV (Mkt 11–25)	1,164,350	73	15,950
UHF TV (Mkt 26–50)	1,087,450	91	11,950
UHF TV (Mkt 51–100)	1,084,600	136	7,975
UHF TV (Remaining Mkts)	731,325	147	4,975
UHF TV (Construction Permit)	576,375	145	3,975
Auxiliaries	900,000	30,000	30
LPTV/FM & TV Translators & Boosters	1,210,400	7,120	170
Int'l Short Wave	4,750	19	250
TV Satellite (Any Mkt)[55]	68,200	110	620
TV Satellite (Construction Permit)[56]	1,125	5	225
Multipoint Distribution Service[57]	.....	.....	140
Total	21,000,000		

[55] The FY 1994 legislated fee schedule did not distinguish between full service television stations and satellite television stations. Although the Congress did not pass final legislation to assess satellite stations a reduced fee, the House of Representatives did pass legislation establishing a $500 fee for satellite stations in FY 1994. While not legally binding, we used the $500 fee proposed by the House as a ''simulated'' FY 1994 fee in order to calculate a FY 1995 fee for satellite stations.

[56] Unlike other fees proposed for FY 1995, the TV satellite station construction permit fee of $225 was determined by taking the average fee for UHF & VHF television stations and relating it to the average UHF/VHF construction permit fee. Using these relationships for satellite television stations results in a computed fee of $225 (rounded to the nearest $5) for satellite television station construction permits.

[57] The fee for single-channel and multi-channel Multipoint Disribution Service (MDS & MMDS) was developed as part of the Domestic Public Fixed Radio Service, a common carrier service. The payment units are included in the total volume for the Domestic Public Fixed Radio Service included in Appendix C. Regulation of the MDS and MMDS services has been transferred to the Mass Media Bureau.

Appendix F—Development of Cable Services Regulatory Fees

Activity Cost Allocation: The Cable Services Activity was allocated 25.7% (361 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[58] The same percentage (25.7%) was applied to total regulatory fee activity costs ($116.4 million times 25.7%=$29.9 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #3 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Cable Services Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $22.7 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requiremetn: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $7.2 million less than required ($22.7 million minus $29.9 million), proposed Cable Services fees for FY 1995 needed to be adjusted upward by 32.0% ($7.2 million divided by $22.7 million = 32.0%)[59] so that revenue would better approximate the $29.9 million cost allocation for this Activity. Table #3 below shows revenue requirements that were computed for each fee category within the Cable Services Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Cable Services Activity.

TABLE #3

Category	Revenue requirement	Divided by payment volume	Equals new fee
CARS	$603,780	2,082	290
Cable Television Systems	29,400,000	60,000,000	.49
Total	29,900,000		

Appendix G—Development of Common Carrier Services Regulatory Fees

Activity Cost Allocation: The Common Carrier Activity was allocated 49.0% (689 FTEs) of the total 1,406 FTEs associated with all regulatory fee activities.[60] The same percentage (49.0%) was applied to total regulatory fee activity costs ($116.4 million times 49.0% = $57.0 million).

Revision of Payment Unit Volumes: Payment volume estimates (units of payment) were updated for FY 1995. See Table #4 below.

Projected Revenue Using FY 1994 Fee Amounts & Revised FY 1995 Payment Volumes: Projected revenue for FY 1995 for Common Carrier Activities using FY 1994 fee amounts was calculated by multiplying the FY 1995 payment volume in each fee category by the FY 1994 fee amounts. The resulting total revenue in these categories totaled approximately $28.4 million. This is the amount of revenue we would collect in this category if we did not change any fee amounts from FY 1994.

Pro-Rata Application of FY 1995 Revenue Requirement: Because projected revenues using FY 1994 fee amounts would have resulted in collections of $28.6 million less than required ($57.0 million minus $28.4 million), Common Carrier fees for FY 1995 needed to be adjusted upward by 100.5% ($28.6 million divided by $28.4 million = 100.5%)[6] so that revenue would better approximate the $57.0 million cost allocation for this Activity. Table #4 below shows revenue requirements that were computed for each fee category within the Common Carrier Activity.

Calculation of Fee: We divided each of the individual revenue requirements shown in

[58] Represents 15.9% of all FCC FTEs.

[59] Actual percentage is 31.9619879%.

[60] Represents 30.3% of all FCC FTEs.

[61] Actual percentage is 100.4512615%.

the chart below by the FY 1995 projected payment volume to determine the new fee requirement for each fee category within the Common Carrier Activity:

Table #4

Category	Revenue requirement	Divided by payment volume	Equals new fee
Domestic Public Fixed Radio	$1,960,000	14,000	140
Cellular/Public Mobile Radio	3,510,000	23,400,000	.15
Public Mobile One-way Paging	392,000	19,600,000	.02
International Public Fixed Radio	4,000	20	200
Earth Stations (VSATs/Mob. Eq./Tr. & T/R)	1,114,740	3,378	330
Space Stations	2,925,000	39	75,000
IXC, LEC, CAPS, Other Providers	46,310,880	52,626,000,000	.00088
International Circuits	500,000	125,000	4
Total	57,000,000		

Appendix H—FY 1995 Guidelines for Regulatory Fee Categories

1. The guidelines below provide an explanation of regulatory fee categories established by the Schedule of Regulatory Fees in Section 9(g) of the Communications Act, 47 U.S.C. § 159(g) as modified in the instant *Memorandum Opinion and Order.* Where regulatory fee categories need interpretations or clarification, we have relied on the legislative history of Section 9, our own experience in establishing and regulating the Schedule of Regulatory Fees for Fiscal Year (FY) 1994 and the services subject to the fee schedule, and the comments of the parties in our proceeding to adopt fees for FY 1995. The categories and amounts set out in the schedule have been modified to reflect changes in the Commission's appropriation, our costs of providing the regulatory services to be recovered by the fee program, additions and changes in the services subject to the fee requirement and the benefits derived from the Commission's regulatory activities. The schedule may be similarly modified or adjusted in future years to reflect changes in the Commission's budget and in the services regulated by the Commission. *See* 47 U.S.C. § 159(b) (2), (3).

1. Private Radio Services

2. The Private Radio Services are regulated by the Wireless Telecommunications Bureau. Two levels of statutory fees were established—exclusive use services and shared use services. Thus, licensees who generally receive a higher quality communication channel due to exclusive or lightly shared frequency assignments, will pay a higher fee than those who share marginal quality assignments. This dichotomy is consistent with the directive of section 9 that the regulatory fees reflect the benefits provided to the licensees. *See* 47 U.S.C. § 159(b)(1)(A). In addition, because of the generally small amount of the fees assessed against Private Radio Service licensees, applicants for new licenses and reinstatements and for renewal of existing licenses are required to pay a regulatory fee covering the entire license term, with only a percentage of all licensees paying a regulatory fee in any one year. Applications for modification or assignment of existing authorizations do not require the payment of regulatory fees. The expiration date of those authorizations will reflect only the unexpired term of the underlying license rather than a new license term.

3. There have been no changes from FY 1994 in the rules for calculating and paying regulatory fees in the Private Radio Services.

a. Exclusive Use Services

4. *Land Mobile Services*: Regulatees in this category include those authorized under Part 90 of the Commission's Rules to provide limited access Wireless Radio service that allows high quality voice or digital communications between vehicles or to fixed stations to further the business activities of the licensee. These services, using the 220–222 MHz band and frequencies at 470 MHz and above, may be offered on a private carrier basis in the Specialized Mobile Radio Services (SMRS).

5. For FY 1995, Land Mobile licensees will pay a $6 annual regulatory fee per license, payable for an entire five or ten year license term at the time of application for a new, renewal or reinstatement license.[62] The total regulatory fee due is either $30 for a license with a five year term or $60 for a license with a 10 year term.

6. *Microwave Services*: Set forth in the FY 1995 fee schedule within the Wireless Radio Service category, these services include private microwave systems and private carrier systems authorized under Part 94 of the Commission's Rules to provide telecommunications services between fixed points on a high quality channel of communications. Microwave systems are often used to relay data and to control railroad, pipeline and utility equipment. For FY 1995, Microwave licensees will pay a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year license term.

7. *Interactive Video Data Service (IVDS)*: As set forth in the FY 1995 fee schedule within the Wireless Radio Service category, IVDS is a two-way point-to-multi-point radio service allocated high quality channels of communications and authorized under Part 95 of the Commission's Rules. IVDS provides information, products and services, and also the capability to obtain responses from subscribers in a specific service area. IVDS is offered on a private carrier basis. For FY 1995, IVDS licensees will pay a $6 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the five year term of the license.

b. Shared Use Services

8. *Marine (Ship) Service*: This service is a shipboard radio service authorized under Part 80 of the Commission's Rules to provide telecommunications between watercraft or between watercraft and shore-based stations. Radio installations are required by domestic and international law for large passenger or cargo vessels. Radio equipment may be voluntarily installed on smaller vessels, such as recreational boats. For FY 1995, Marine (Ship) Station licensees will pay a $3 annual regulatory fee per station, payable for an entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 for the ten year license term.

9. *Marine (Coast) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes land-based stations in the maritime services, authorized under Part 80 of the Commission's Rules, to provide communications services to ships and other watercraft in coastal and inland waterways. For FY 1995, licensees will pay a $3 annual regulatory fee per call sign, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per call sign for the five year license term.

10. *Private Land Mobile (Other) Services*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio Services operating under Parts 90 and 95 of the Commission's Rules. Services in this category provide one or two way communications between vehicles, persons or to fixed stations on a shared basis

[62] Although this fee category includes licenses with ten year terms, the estimated volume of ten year license applications in FY 1995 is less than one tenth of one percent and, therefore, is statistically insignificant.

and include radiolocation services, private carrier paging services, industrial radio services and land transportation radio services. For FY 1995, licensees of services in this category will pay a $3 annual regulatory fee per call sign, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 for the five year license term. There are no changes to the rules for calculating and submitting regulatory fee payments by Private Land Mobile Service licensees.

11. *Aviation (Aircraft) Service*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include stations authorized to provide communications between aircraft and from aircraft to ground stations and includes frequencies used to communicate with air traffic control facilities pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Aircraft) Stations will pay a $3 annual regulatory fee per station, payable for the entire ten year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $30 per station for the ten year license term.

12. *Aviation (Ground) Service*: This service, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, includes stations authorized to provide ground-based communications to aircraft for weather or landing information, or for logistical support pursuant to Part 87 of the Commission's Rules. For FY 1995, licensees of Aviation (Ground) Stations will pay a $3 annual regulatory fee per license, payable for the entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee is $15 per call sign for the five year license term.

13. *General Mobile Radio Service (GMRS)*: These services, set forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, include Land Mobile Radio licensees providing personal and limited business communications between vehicles or to fixed stations for short-range, two-way communications pursuant to Part 95 of the Commission's Rules. For FY 1995, GMRS licensees will pay a $3 annual regulatory fee per license, payable for an entire five year license term at the time of application for a new, reinstatement or renewal license. The total regulatory fee due is $15 per license for the five year license term.

c. Amateur Radio Vanity Call-Signs

14. *Amateur Vanity Call-Signs:* As set forth forth in the FY 1995 Schedule of Regulatory Fees within the Wireless Radio Service category, the fee covers voluntary requests for specific call-signs in the Amateur Radio Service authorized under part 97 of the Commission's Rules. For FY 1995, applicants for Amateur Vanity Call-Signs will pay a $3 annual regulatory fee per call-sign, payable for an entire ten year license term at the time of application for a vanity call sign. The total regulatory fee due would be $30 per license for the ten year license term.[63]

2. Mass Media Bureau

15. The regulatory fees for the Mass Media fee category apply to broadcast licensees and permittees. Noncommercial Educational Broadcasters are exempt from the fees.

a. Commercial AM and FM Radio

16. These categories include licensed Commercial AM (Classes A, B, C, and D) and FM (Classes A, B, B1, C, C1, C2, and C3) Radio Stations operating under Part 73 of the Commission's Rules. The regulatory fees for AM and FM Stations for FY 1995 are as follows:

AM Radio

Class A	$1,120
Class B	620
Class C	250
Class D	310

FM Radio

Classes C, C1, C2, B	$1,120
Classes A, B1, C3	745

b. Construction Permits—Commercial AM Radio

17. This category includes holders of permits to construct new Commercial AM Stations. For FY 1995 permittees will pay a fee $125 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable and licensees would be required to pay the applicable fee for the designated class of the station.

c. Construction Permits—Commercial FM Radio

18. This category includes holders of permits to construct new Commercial FM Stations. For FY 1995 permittees will pay a fee of $620 for each permit held. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a regulatory fee based upon the designated class of the station. There are no changes in the rules for calculating and submitting regulatory fees by FM construction permittees.

d. Commercial Television Stations

19. This category includes licensed Commercial VHF and UHF Television Stations covered under Part 73 of the Commission's Rules, except commonly owned Television Satellite Stations, addressed separately below. The fees for each category of station are as follows:

VHF Markets 1–10	$22,420
VHF Markets 11–25	19,925
VHF Markets 26–50	14,950
VHF Markets 51–100	9,975
VHF Remaining Markets	6,225
UHF Markets 1–10	$17,925
UHF Markets 11–25	15,950
UHF Markets 26–50	11,950
UHF Markets 51–100	7,975
UHF Remaining Markets	4,975

e. Commercial Television Satellite Stations

20. Commonly owned Television Satellite Stations in any market (authorized pursuant to Note 5 of Section 73.3555 of the Commission's Rules) that retransmit programming of the primary station are assessed a fee of $620 annually. Only those stations designated as Television Satellite Stations in the 1994 edition of the *Television and Cable Factbook* are eligible to submit the fee applicable to Television Satellite Stations. All other television licensees are subject to the regulatory fee payment required for their class of station and market.

f. Construction Permits—Commercial VHF Television Stations

21. This category includes holders of permits to construct new Commercial VHF Television Stations. For FY 1995 VHF permittees will pay an annual regulatory fee $4,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

g. Construction Permits—Commercial UHF Television Stations

22. This category includes holders of permits to construct new VHF Television Stations. For FY 1995 UHF Television permittees will pay an annual regulatory fee $3,975. Upon issuance of an operating license, this fee would no longer be applicable. Instead, licensees would pay a fee based upon the designated market of the station.

h. Construction Permits—Satellite Television Stations

23. The fee for UHF and VHF Television Satellite Station construction permits for FY 1995 is $225. An individual regulatory fee payment is to be made for each Television Satellite Station construction permit held.

i. Low Power Television, FM Translator and Booster Stations, TV Translator and Booster Stations

24. This category includes Low Power UHF/VHF Television stations operating under Part 74 of the Commission's Rules with a transmitter power output limited to 0.01 kw for a UHF facility and, generally, 1 kw for a VHF facility. Low Power Television (LPTV) stations may retransmit the programs and signals of a TV Broadcast Station, originate programming, and/or operate as a subscription service. This category also includes translators and boosters operating under Part 74 which rebroadcast the signals of full service stations on a frequency different from the parent station (translators) or on the same frequency (boosters). We have amended the fee schedule to include FM Translator and Booster stations in this fee service because we believe these facilities were inadvertently omitted from the statutory fee schedule and we are unaware of any reason not to establish a fee for these services. We have also received requests for waivers of the regulatory fees from operators of community based Translators. These Translators are generally not affiliated with commercial broadcasters, they are nonprofit, nonprofitable, or only marginally profitable,

[63] Section 9(h) exempts ''amateur radio operator licenses under Part 97 of the Commission's rules (47 CFR Part 97)'' from the requirement. However, Section 9(g)'s fee schedule explicitly includes ''Amateur vanity call signs'' as a category subject to the payment of a regulatory fee.

serve small rural communities, and are supported financially by the residents of the communities served. We are aware of the difficulties these Translators have in paying even minimal regulatory fees, and we will address those concerns in the ruling on reconsideration of the *FY 1994 Order.* The stations in this category are secondary to full service stations in terms of frequency priority. For FY 1995, licensees in this category will pay a regulatory fee of $170 for each license held.

j. Broadcast Auxiliary Stations

25. This category includes licensees of remote pickup stations, Aural Broadcast Auxiliary Stations, Television Broadcast Auxiliary Stations, and Low Power Auxiliary Stations, authorized under Part 74 of the Commission's Rules. Auxiliary Stations are generally associated with a particular television or radio broadcast station or cable television system. For FY 1995 licensees of Commercial Auxiliary Stations will pay a $30 annual regulatory fee on a per call sign basis.

k. International HF Broadcast (Short Wave)

26. This category covers International Broadcast Stations licensed under Part 73 of the Commission's Rules to operate on frequencies in the 5,950 khz to 26,100 Khz range to provide service to the general public in foreign countries. The fees for International HF Broadcast Stations are set forth in the International Service category in the FY 1995 fee schedule. For FY 1995 International HF Broadcast Stations will pay an annual regulatory fee of $250 per station license.

3. Cable Services

a. Cable Television Systems

27. This category includes operators of Cable Television Systems, providing or distributing programming or other services to subscribers under Part 76 of the Commission's Rules. For FY 1995 Cable Systems will pay a regulatory fee of $.49 per subscriber.[64]

28. Payments for Cable Systems are to be made on a per subscriber by community unit basis as of December 31, 1994, as reported on each Cable System's 1994 Annual Report of Cable Systems (FCC Form 325). Cable Systems should determine their subscriber numbers by calculating the number of single family dwellings, the number of individual households in multiple dwelling units, *e.g.*, apartments, condominiums, mobile home parks, etc., paying at the basic subscriber rate, the number of bulk rate customers and the number of courtesy or fee customers. In order to determine the number of bulk rate subscribers, a system should divide its bulk rate charge by the annual subscription rate for individual households. *See FY 1994 Order,* Appendix B at para. 31.

b. Cable Antenna Relay Service

29. This category includes Cable Antenna Relay Service (CARS) stations used to transmit television and related audio signals, signals of AM and FM Broadcast Stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a Cable Television System. For FY 1995, licensees will pay an annual regulatory fee of $290 per CARS license.

4. Common Carrier Services

a. Mobile Services

30. *Public Mobile/Cellular Radio Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers and others (e.g., cellular radio licensees) offering, under Parts 22 and 24 of the Commission's Rules, a wide variety of land-based or air-to-ground mobile telephone, paging or data transmission services to the public. Licensees include those using radio to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio.

31. For FY 1995, each licensee in the Public Mobile/Cellular Radio Services will pay an annual regulatory fee for each mobile or cellular unit (mobile or cellular call sign or telephone number), including paging units, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee is $.15 per unit.

32. *Public Mobile One-Way Paging Services:* These services are included within the FY 1995 Schedule of Regulatory Fees in the Wireless Radio Service category. They include common carriers offering, under Parts 22 of the Commission's Rules, one-way paging services to the public.

33. For FY 1995, each licensee in the Public Mobile One-Way Paging Services will pay an annual regulatory fee for each paging unit, assigned to its customers, including resellers of its services. For FY 1995, the regulatory fee of $.02 per unit.

b. Fixed Radio Services

34. *Domestic Public Fixed Radio Service:* This category includes licensees in the Point-to-Point Microwave Radio Service, Local Television Transmission Radio Service, Digital Electronic Message Service, Multipoint Distribution Service (MDS), and Multichannel Multipoint Distribution Service (MMDS), authorized under Part 21 of the Commission's Rules to use microwave frequencies for video and data distribution within the United States. For FY 1995, Domestic Public Fixed Radio Service licensees pay a $140 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission.

35. *International Public Fixed Radio Service:* This fee category includes common carriers authorized under Part 23 of the Commission's Rules to provide radio communications between the United States and a foreign point via microwave or HF troposcatter systems, other than satellites and satellite earth stations, but not including service between the United States and Mexico and the United States and Canada using frequencies above 72 MHz. For FY 1995, International Public Fixed Radio Service licensees will pay a $200 annual regulatory fee per call sign, payable on a specified date to be announced by the Commission.

c. VSATs and Equivalent C-Band Stations/ Mobile Satellite Earth Stations

36. *VSATs and Equivalent C-Band Stations:* This fee category includes VSAT Earth Stations and equivalent C-Band Earth Stations and antennas and earth station systems comprised of very small aperture terminals operating in the 12 and 14 GHz bands and providing a variety of communications services to other stations in the network. *VSAT* systems consist of a network of technically-identical small Fixed-Satellite Earth Stations which often include a larger hub station. VSAT Earth Stations and C-Band Equivalent Earth Stations are authorized pursuant to Part 25 of the Commission's Rules. *Mobile Satellite Earth Stations,* operating pursuant to Part 25 of the Commission's Rules under blanket licenses for mobile antennas (transceivers), are smaller than one meter and provide voice or data communications, including position location information for mobile platforms such as cars, buses or trucks. For FY 1995, licensees of VSATs and Mobile Satellite Earth Stations will pay an annual regulatory fee of $330 per authorization or registration.

d. Fixed Satellite Earth Stations

37. *Transmit/Receive and Transmit Only Earth Stations.* This category includes fixed-satellite transmit/receive and transmit only earth station antennas, authorized or registered under Part 25 of the Commission's Rules, operated by private and public carriers to provide telephone, television, data, and other forms of communications. The proposed fees for this fee category are set forth in the FY 1995 fee schedule in the International Service category. Included in this category are telemetry, tracking, and control (TT&C) ear stations and earth station uplinks.

38. For FY 1995 licensees of transmit/ receive and transmit only earth stations will pay a fee of $330 per authorization or registration.

39. *Received only earth stations.* For FY 1995 there is no regulatory fee for receive-only earth stations.

e. Space Stations (Geosynchronous)

40. Geosynchronous Space Stations set forth in the FY 1995 Schedule of regulatory Fees within the International Service category, are domestic and international satellites positioned in orbit to remain approximately fixed relative to the earth. They are authorized under Part 25 of the Commission's Rules to provide communications between satellites and earth stations on a common carrier and/or private carrier basis. For FY 1995, entities authorized to operate Geosynchronous Space Stations in accordance with section 25.120(d) will be assessed an annual regulatory fee of $75,000 per operational station in orbit. Payment is required for any Geosynchronous Satellite that has been launched and tested and is authorized to provide service.

f. International Bearer Circuits

41. Regulatory fees for International Bearer Circuits are set forth in the International Service category in the FY 1995 fee schedule.

[64] Cable systems are to pay their regulatory fees on a per subscriber basis rather than per 1,000 subscribers as set forth in the statutory fee schedule. *See FY 1994 Order* at para. 100.

The proposed fee is to be paid by the facilities-based common carrier activating the circuit in any transmission facility for the provision of service to an end user or resale carrier. Payment of the fee for bearer circuits sold on an indefeasible right of use (IRU) basis or leased to any customer other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. *Compare FY 1994 Order* at 5367. The fee is based upon active 64 Kbps circuits, or equivalent circuits. Under this formulation, 64 Kbps circuits or their equivalent will be assessed a fee. Equivalent circuits include the 64 Kbps circuit equivalent of larger bit stream circuits. For example, the 64 Kbps circuit equivalent of a 2.048 Mbps circuit is 30 64 Kbps circuits. Analog circuits such as 3 and 4 KHz circuits used for international service are also included as 64 Kbps circuits. However, circuits derived from 64 Kbps circuits by the use of digital circuit multiplication systems are not equivalent 64 Kbps circuits. Such circuits are not subject to fees. Only the 64 Kbps circuit from which they have been derived will be subject to payment of a fee. For FY 1995, the regulatory fee is $4.00 for each active 64 Kbps circuit or equivalent. For analog television channels we will assess fees as follows:

Analog Television Channel Size in MHz Circuits	No. of equivalent 64 Kbps
36	630
24	288
18	240

g. Inter-Exchange and Local Exchange Carriers, Competitive Access Providers, Pay Telephone Providers, and other Non-Mobile Providers of Interstate Service

42. We have revised the Schedule of Regulatory Fees for carriers to include not only IXCs, LECs and CAPs, but also domestic and international carriers that provide operator services, WATS, 800, 900, telex, telegraph, video, other switched, interstate access, special access, and alternative access services either by using their own facilities or by reselling facilities and services of other carriers or telephone carrier holding companies, and companies other than traditional local telephone companies that provide interstate access services to long distance carriers and other customers.

43. These common carriers, including resellers, must submit fee payments based upon their proportionate share of gross interstate revenues using the methodology that we have adopted for calculating contributions to the TRS fund. *See Telecommunications Relay Services*, 8 FCC Rcd 5300 (1993). In order to avoid imposing any double payment burden on resellers, we will permit carriers to subtract from their gross interstate revenues as reported to NECA in connection with their TRS contribution, any payments made to underlying carriers for the telecommunications facilities or services, including payments for interstate access service. For FY 1995, carriers will multiply their gross revenue figure by the 0.00088 to determine the appropriate fee for this category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

44. The FY 1995 revenue requirement for this category is $46,310,880. For FY 1995, carriers will multiply their gross revenue figure by 0.00088 to determine the appropriate fee for this category of service and may reduce this amount by the total amount of their payments to underlying carriers for telecommunications facilities or services.

Appendix I—Description of FCC Activities

Executive Direction and Support: Overall policy direction, program development and executive direction as provided by the Chairman and staff, Commissioners and their staffs and by the Managing Director. Also includes support services such as management planning, budgeting and financial management, personnel resource management, information resources management and ADP operations, security, and administrative and office services. Includes the activities of the Office of Legislative Affairs and the Office of the Inspector General. These costs are not recoverable through regulatory fees.

Legal Services: Legal review and support services including matters of administrative law, litigation and adjudication. Includes the Office of General Counsel, Office of Administrative Law Judges and the Review Board. These costs are not recoverable through regulatory fees.

Authorization of Service: The authorization or licensing of radio stations, telecommunications equipment and radio operators. Also includes the authorization of common carrier services and facilities. These costs are not recoverable through regulatory fees.

Policy and Rule Making: Formal inquiries, rule making proceedings to establish or amend the Commission's rules and regulations, action on petitions for rule making and requests for rule interpretations or waivers; economic studies and analyses; spectrum planning, modeling, propagation-interference analyses and allocation; and development of equipment standards. Also includes policy and rule making associated with FCC participation in international organizations, conferences and negotiations. These costs are recoverable through regulatory fees.

Enforcement: Enforcement of the Commission's rules, regulations and authorizations, including investigations, inspections, compliance monitoring and sanctions of all types. Also includes the receipt and disposition of formal and informal complaints regarding common carrier rates and services, the review and acceptance/rejection of carrier tariffs, and the review, prescription and audit of carrier accounting practices. These costs are recoverable through regulatory fees.

International: The preparation for and participation in international, regional and bilateral conferences, meetings and negotiations; and administration of Commission responsibilities under international radio regulations and other treaties, conventions and agreements. Also includes activities associated with international frequency coordination and notification. These costs are recoverable through regulatory fees.

Public Information Services: The publication and dissemination of Commission decisions and actions, and related activities; public reference and library services; the duplication and dissemination of Commission records and databases; the receipt and disposition of public inquiries; consumer, small business and public assistance; and public affairs and media relations. These costs are recoverable through regulatory fees.

Comments were filed:
—Dudman Communications Corp.
—Sandra R. Swanson
—Bruce Hood
—KGRR–FM 97.3
—Sierra Cascade Communications
—Coleman Broadcasting Company
—WTIM et al.
—Aircraft Owners and Pilots Association
—Personal Communications Industries Association
—Fant Broadcasting Company
—Grove Cable Co.
—United States Coast Guard
—AllNet Communication Services, Inc.
—MobileMedia Communications
—KVPA
—Sovereign Broadcasting, Inc.
—KVRW–FM
—Northern Broadcasting, Inc.
—PanAmSat Corporation
—Competitive Telecommunications Association
—LDDS Communications, Inc.
—Ameritech
—Cablevision Industries Corp.
—Montana Broadcasters Association
—Century Cellunet, Inc.
—GTE Services Corp.
—Maine Association of Broadcasters
—James P. Wagner
—Livingston Radio Company
—Associated Press
—Frontier Cellular Holding, Inc.
—Sprint Corporation
—De La Hunt Broadcasting
—Cable Telecommunications Association
—Columbia Communications Corp.
—Hertz Technologies, Inc.
—National Cable Television Association, Inc.
—KUSK, Inc.
—Duhamel Broadcasting Enterprises
—Southwestern Bell, Inc.
—EDS Corp.
—Wireless Cable Association International, Inc.
—MCI Telecommunications Corporation
—MFS Communications Company, Inc.
—AllTell Mobile Communications
—America's Carriers Telecommunications Association
—Mid-State Television, Inc.
—Whithers Broadcasting Company of Texas, el al.
—National Association of Broadcasters
—American Public Communications Council
—Radio 840, Inc.
—Teleport Communication's Group, Inc.
—Bell Atlantic

—Cellular Telecommunications Industry Association
—Comsat General Corp.
—NYNEX companies
—Association for Local TeleCommunications Services
—Telecommunications Resellers Association
—Broadcast Media Associates
—National Exchange Carriers Association, Inc.
—Cablevision Lightpath, Inc.
—Beaverkettle Company
—Comsat Video Enterprises
—Stellar Communications
—Bloomington Broadcasting
—Washington Broadcasting Company
—American Radio Relay League
—U.S. West Communications
—AT&T
—WPKR Radio
—GE American Communications
—Avis Rent A Car
—Airtouch Paging
—Thomas Clements
—KBZQ–FM
—C&S Radio-South Fork L.P.
—National Cable Television Assocation

Reply pleadings were filed by:

—WNAL–TV
—Southwestern Bell Corporation
—Vanguard Cellular Systems, Inc.
—Telecommunications Resellers Association
—National Cable Television Association
—Bell Atlantic
—MCI Telecommunications Corporation
—Personal Communications
—*Columbia Communications
—Sprint Corporation
—*National Wireless Resellers
—*Directv
—LDDS Communications, Inc.
—Time Warner Corporation
—GE American Communications
—Arch Communications Group
—Airtouch Paging
—Alltel Mobile Corporation
—National Association of Broadcasters
—Pacific Bell and Nevada Bell
—Paging Newtwork, Inc.
—AT&T
—Small Cable Business Association
—Ameritech
—NFS Communications Company
—*Comsat
—GTE
—Metrocall, Inc.
—KUSK, Inc.
—Pabamasat Corporation
—Columbia Communications
—American Public Communications Council

*Parties also filed comments.

Rule Changes

47 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

2. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees and filing locations for wireless radio services.

Exclusive use services (per license)	Fee amount	Address
1. Land Mobile (Above 470 MHz, Base Station & SMRS) (47 CFR, Part 90):		
(a) 800 MHz: New, Renewal, Reinstatement (FCC 574).	$600	FCC, 800 MHz, P.O. Box 358235, Pittsburgh, PA, 15251–5235.
(b) 900 MHz New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 900 MHz, P.O. Box 358240, Pittsburgh, PA, 15251–5240.
(c) 470–512, 800, 900, 220 MHz, 220 MHz Nationwide: Renewal (FCC 574R, FCC 405A).	6.00	FCC, 470–512, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(d) Correspondence: Blanket Renewal (470–512, 800, 900, 220 MHz) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(e) 220 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 220 MHz, P.O. Box 358360, Pittsburgh, PA, 15251–5360.
(f) 470–512 MHz: New, Renewal, Reinstatement (FCC 574).	6.00	FCC, 470–512, P.O. Box 358810, Pittsburgh, PA, 15251–5810.
(g) MHz Nationwide: New, Renewal, Reinstatement.	6.00	FCC, Nationwide, P.O. Box 358820, Pittsburgh, PA, 15251–5820.
2. Microwave (47 CFR Pt. 94):		
(a) Microwave: New, Renewal, Reinstatement (FCC 402).	6.00	FCC, FCC, Microwave, P.O. Box 358250, Pittsburgh, PA 15251–5250.
(b) Microwave: Renewal (FCC 402R).	6.00	FCC, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
(c) Correspondence: Blank Renewal (Microwave) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
3. Interactive Video Data Service:		
(a) IVDS: Renewal (FCC 574R, FCC 405A).	6.00	FCC, IVDS, P.O. Box 358245, Pittsburgh, PA 15251–5245.
(b) Correspondence: Blanket Renewal (IVDS) (Remittance Advice, Correspondence).	6.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(c) IVDS: New, Renewal Reinstatement (FCC 574)..	6.00	FCC, IVDS, P.O. Box 358365, Pittsburgh, PA 15251–5365.
4. Shared Use Services:		
(a) Land Transportation (LT): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Land Trans., P.O. Box 358215, Pittsburgh, PA 15251–5215.
(b) Business (Bus.): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Business, P.O. Box 358220, Pittsburgh, PA, 15251–5220.
(c) Other Industrial (OI): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, Other Indus., P.O. Box 358225, Pittsburgh, PA 15251–5225.
(d) General Mobile Radio Service (GMRS): New, Renewal, Reinstatement (FCC 574).	3.00	FCC, GMRS, P.O. Box 358230, Pittsburgh, PA, 15251–5230.

Exclusive use services (per license)	Fee amount	Address
(e) Business, Other Industrial, Land Transportation, GMRS: Renewal (FCC 574R, FCC 405A).	3.00	FCC, Bus., OI, LT, GMRS, P.O. Box 358245, Pittsburgh, PA, 15251–5245.
(f) Ground: New, Renewal, Reinstatement (FCC 406).	3.00	FCC, Ground, P.O. Box 358260, Pittsburgh, PA, 15251–5260.
(g) Coast: New, Renewal, Reinstatement (FCC 503).	3.00	FCC, Coast, P.O. Box 358265, Pittsburgh, PA, 15251–5265.
(h) Ground: Renewal (FCC 452R).	3.00	FCC, Ground, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(i) Coast: Renewal (FCC 452R).	3.00	FCC, Coast, P.O. Box 358270, Pittsburgh, PA, 15251–5270.
(j) Ship: New, Renewal, Reinstatement (FCC 506).	3.00	FCC, Ship, P.O. Box 358275, Pittsburgh, PA, 15251–5275.
(k) Aircraft: New, Renewal, Reinstatement (FCC 404).	3.00	FCC, Aircraft, P.O. Box 358280, Pittsburgh, PA 15251–5280.
(l) Ship: Renewal (FCC 405B).	3.00	FCC, Ship, P.O. Box 358920, Pittsburgh, PA, 15251–5290.
(m) Aircraft: Renewal (FCC 405B).	3.00	FCC, Aircraft, P.O. Box 358290, Pittsburgh, PA, 15251–5290.
(n) Correspondence: Blanket Renewal (Bus., OI, LT, GMRS) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(o) Correspondence: Blanket Renewal (Ground) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(p) Correspondence: Blanket Renewal (Coast) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA, 15251–5305.
(q) Correspondence: Blanket Renewal (Aircraft) (Remittance Advice, Correspondence).	3.00	FCC, Corres. P.O. Box 35803, Pittsburgh, PA, 15251–5305.
(r) Correspondence: Blanket Renewal (Ship) (Remittance Advice, Correspondence).	3.00	FCC, Corres., P.O. Box 358305, Pittsburgh, PA , 15251–5305.
Amateur Vanity Call Signs.	3.00	FCC, Amateur Vanity, P.O. Box 358924, Pittsburgh, PA, 15251–5924.
Cellular Radio/ Public Mobile (per unit).	.15	FCC, Cellular, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Public Mobile One-Way Paging (per unit).	.02	FCC, Paging, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

3. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

	Fee amount	Address
AM RAdio (47 CFR, Part 73):		
1. Class D Daytime.	$310	FCC, Am Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Class A Fulltime.	1,120	
3. Class B Fulltime.	620	
4. Class C Fulltime.	250	
5. Construction Permits.	 250	
FM Radio (47 CFR, Part 73):		
1. Classes C, C1, C2, B.	1,120	FCC, FM Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Classes A, B1, C3.	745	
3. Construction Permits.	 620	
TV (47 CFR, Part 73) VHF Commercial:		
1. Makets 1 thru 10.	22,420	FCC, TV Branch, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	19,925	
3. Markets 26 thru 50.	 14,950	
4. Markets 51 thru 100.	. 9, 975 . 6,225	
5. Remaining Markets.	. 4,975	
6. Construction Permits.		
UHF Commercial:		
1. Markets 1 thru 10.	17,925	FCC, UHF Commercial, P.O. Box 348835, Pittsburgh, PA 15251–5835.
2. Markets 11 thru 25.	 15,950	
3. Markets 26 thru 50.	. 11,950	
4. Markets 51 thru 100.	. 7,975 . 4,975	
5. Remaining Markets.	. 3,975	
6. Construction Permits.		
Satellite UHF/ VHF Commercial:		
1. All Markets.	620	FCC Satellite TV, P.O. Box 358835, Pittsburgh, PA 15251–5835.
2. Construction Permits.	 225	
Low Power TV, TV/FM Translator, & TV/FM Booster (47 CFR, Part 74).	170	FCC, Low Power, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Broadcast Auxiliary.	30	FCC, Auxiliary, P.O. Box 358835, Pittsburgh, PA 15251–5835.
Multipoint Distribution.	140	FCC, Multipoint P.O. Box 358835, Pittsburgh, PA 15251–5835.

4. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges and filing locations for common carrier services.

	Fee amount	Address
Radio Facilities:		
1. Domestic Public Fixed.	$140	FCC, Dom. Pub. Fixed, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. Inter-Exchange Carrier (per dollar contributed to TRS Fund).	.00088	FCC, Carriers, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Local Exchange Carrier (per dollar contributed to TRS Fund).	.00088	
3. Competitive Access Provider (per dollar contributed to TRS Fund).	.00088	
4. Other Interexchange Carriers and Service Providers (per dollar contributed to TRS Fund).	.00088	

5. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees and filing locations for cable television services.

	Fee amount	Address
1. Cable Antenna Relay Service.	$290	FCC, Cable, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
2. Cable TV System (per subscriber).	.49	

§§ 1.1167 and 1.1168 [Removed]

§§ 1.1156 through 1.1166 [Redesignated as §§ 1.1157 through 1.1167]

6. Sections 1.1167 and 1.1168 are removed, §§ 1.1156 through 1.1166 of Subpart G are redesignated as §§ 1.1157 through 1.1167 respectively and are revised, and a new § 1.1156 is added to read as follows:

§ 1.1156 Schedule of regulatory fees and filing locations for international services.

	Fee amount	Address
Radio Facilities:		
1. International (HF): Broadcast.	$250 200	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
International Public: Fixed.		
Space Stations (Geosynchronous Orbit).	75,000	FCC, Space Stations, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Earth Stations:		
1. VSAT & Equivalent C–Band antennas, Mobile Satellite Earth Stations, Fixed Earth Stations-Transmit/Receive & Transmit Only (per authorization or registration).	330	FCC, Earth Station, P.O. Box 358835, Pittsburgh, PA, 15251–5835.
Carriers:		
1. International Circuits (per active 64KB circuit or equivalent).	4.00	FCC, International, P.O. Box 358835, Pittsburgh, PA, 15251–5835.

§ 1.1157 Payment of charges for regulatory fees.

Payment of a regulatory fee, required under § § 1.1152 through 1.1156, shall be filed in the following manner:

(a) Payments of regulatory fees shall be submitted with the filing of any application for a new, renewal or reinstatement of a license or other authorization in the wireless radio services. (1) Any regulatory fee submitted with an application in the wireless radio services shall include an advance payment of the total annual regulatory fee payment due for the entire term of the license or other authorization. The amount of the regulatory fee payment due with any application in the wireless radio service shall be the multiple of the number of years in the entire term of the requested license or other authorization multiplied by the annual fee payment required in the Schedule of Regulatory Fees, effective at the time the application is filed. Except as set forth in § 1.1160, advance payments shall be final and shall not be readjusted during the term of the license or authorization, notwithstanding any subsequent increase or decrease in the annual amount of a fee required under the Schedule of Regulatory Fees.

(2) Failure to file the appropriate regulatory fee with an application in the wireless radio service will result in the return of the accompanying application, including an application, for which the Commission has assigned a specific filing deadline.

(b)(1) Payments of standard regulatory fees, applicable to mass media, common carrier, cable and international services, shall be filed in full on an annual basis at a time announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(2) Large regulatory fees, as annually defined by the Commission, may be submitted in installment payments or in a single payment on a date certain as announced by the Commission or the Managing Director, pursuant to delegated authority, and published in the **Federal Register**.

(c) Standard regulatory fee payments, as well as any installment payment, must be filed with a FCC Form 159, FCC Remittance Advice, and a FCC Form 159C, Remittance Advice Continuation Sheet, if additional space is needed. Failure to submit a copy of FCC Form 159 with a standard regulatory fee payment, or an installment payment, will result in the return of the submission and a 25 percent penalty if the payment is resubmitted after the date the Commission establishes for the payment of standard regulatory fees and for any installment payment.

(1) Any late filed regulatory fee payment will be subject to the penalties set forth in section 1.1164.

(2) If one or more installment payments are untimely submitted or not submitted at all, the eligibility of the subject regulatee to submit installment payments may be cancelled.

§ 1.1158 Form of payment for regulatory.

Any regulatory fee payment must be submitted in the form of a check, bank draft or money order denominated in U.S. dollars and drawn on a United States financial institution and made payable to the Federal Communications Commission or by Visa or Mastercard credit cards only. The Commission discourages applicants from submitting cash payments and will not be responsible for cash sent through the mail. Personal or corporate checks dated more than six months prior to their submission to the Commission's lockbox bank and postdated checks will not be accepted and will be returned as deficient.

(a) Upon authorization from the Commission following a written request, electronic fund transfer (EFT) payment of a regulatory fee may be made as follows:

(1)(i) The payor may instruct its bank to make payment of the regulatory fee directly to the Commission's lockbox bank, or

(ii) The payor may authorize the Commission to direct its lockbox bank to withdraw funds directly from the payor's bank account.

(2) No EFT payment of a regulatory fee will be accepted unless the payor has obtained the written authorization of the Commission to submit regulatory fees electronically. Procedures for electronic payment of regulatory fees will be announced by Public Notice. It is the responsibility of the payor to insure that any electronic payment is made in the manner required by the Commission. Failure to comply with the Commission's procedures for electronic fee payment will result in the return of the fee payment, and a penalty fee of 25 percent if the subsequent refiling of the fee payment is late. Failure to comply will also subject the payor to the penalties set forth in § 1.1164.

(b) Multiple payment instruments for a single regulatory fee are not permitted, except that the Commission will accept multiple money orders in payment of any fee where the fee exceeds the maximum amount for a money order established by the issuing entity and the use of multiple money orders is the only practicable means available for payment.

(c) Payment of multiple standard regulatory fees (including an installment payment) due on the same date, may be made with a single payment instrument and cover mass media, common carrier, international, and cable service fee payments. Each regulatee is solely responsible for accurately accounting for and listing each license or authorization and the number of subscribers, access lines, or other relevant units on the accompanying FCC Form 159 and, if needed, FCC Form 159C and for making full payment for every regulatory fee listed on the accompanying form. Any omission or payment deficiency of a regulatory fee will result in a 25 percent penalty of the amount due and unpaid.

(d) Any regulatory fee payment (including a regulatory fee payment submitted with an application in the wireless radio service) made by credit card or money order must be submitted with a completed FCC Form 159. Failure to accurately enter the credit card number and date of expiration and the payor's signature in the appropriate blocks on FCC Form 159 will result in rejection of the credit card payment.

§ 1.1159 Filing locations and receipts for regulatory fees.

(a) Regulatory fee payments must be directed to the location and address set forth in § § 1.1152 through 1.1156 for the specific category of fee involved. Any regulatory fee required to be submitted with an application must be filed as a part of the application package accompanying the application. The Commission will not take responsibility for matching fees, forms and applications submitted at different times or locations.

(b) Petitions for reconsideration or applications for review of fee decisions submitted with a standard regulatory fee payment pursuant to § § 1.1152 through 1.1156 of the rules are to be filed with the Commission's lockbox bank in the manner set forth in §§ 1.1152 through 1.1156 for payment of the fee subject to the petition for reconsideration or the application for review. Petitions for reconsideration and applications for review that are submitted with no accompanying payment should be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

(c) Any request for exemption from a regulatory fee shall be filed with the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554, except that requests for exemption accompanied by a tentative fee payment shall be filed at the lockbox set forth for the appropriate service in § § 1.1152 through 1.1156.

(d) The Commission will furnish a receipt for a regulatory fee payment only upon request. In order to obtain a receipt for a regulatory fee payment, the package must include an extra copy of the Form FCC 159 or, if a Form 159 is not required with the payment, a copy of the first page of the application or other filing submitted with the regulatory fee payment, submitted expressly for the purpose of serving as a receipt for the regulatory fee payment and application fee payment, if required. The document should be clearly marked ''copy'' and should be the top document in the package. The copy will be date stamped immediately and provided to the bearer of the submission, if hand delivered. For submissions by mail, the receipt copy will be provided through return mail if the filer has attached to the receipt copy a stamped self-addressed envelope of sufficient size to contain the receipt document.

§ 1.1160 Refunds of regulatory fees.

(a) Regulatory fees will be refunded, upon request, only in the following instances:

(1) When no regualtory fee is required or an excessive fee has been paid. In the case of an overpayment, the refund amount will be based on the applicants', permittees', or licensees' entire submission. All refunds will be issued to the payor named in the appropriate block of the FCC Form 159.

(2) In the case of advance payment of regulatory fees, subject to § 1.1152, a refund will be issued based on unexpired full years:

(i) When the Commission adopts new rules that nullify a license or other authorization, or a new law or treaty renders a license or other authorization useless;

(ii) When a licensee in the wireless radio service surrenders the license or other authorization subject to a fee payment to the Commission; or

(iii) When the Commission declines to grant an application submitted with a regulatory fee payment.

(3) When a waiver is granted in accordance with § 1.1166.

(b) No pro-rata refund of an annual fee will be issued.

(c) No refunds will be issued based on unexpired partial years.

(d) No refunds will be processed without a written request from the applicant, permittee, licensee or agent.

§ 1.1161 Conditional license grants and delegated authorizations.

(a) Grant of any application or an instrument of authorization or other filing, for which a regulatory fee is required to accompany the application or filing, will be conditioned upon final payment of the regulatory fee. Final payment shall mean receipt by the U.S. Treasury of funds cleared by the financial institution on which the check, bank draft, money order, credit card, wire or electronic payment is drawn.

(1) If, prior to a grant of an instrument of authorization, the Commission is notified that final payment of the regulatory fee has not been made, the application or filing:

(i) Will be dismissed and returned;

(ii) Shall lose its place in the processing line; and

(iii) Will not be treated as timely filed if resubmitted after the relevant filing deadline.

(2) If, subsequent to a grant of an instrument of authorization or other filing, the Commission is notified that final payment has not been made, the Commission will:

(i) Automatically rescind that instrument of authorization for failure to

meet the condition imposed by this subsection;

(ii) Notify the grantee of this action; and

(iii) Treat as late filed any application resubmitted after the original deadline for filing the application.

(3) Upon receipt of a notification of rescission of the authorization, the grantee will immediately cease operations initiated pursuant to the authorization.

(b) In those instances where the Commission has granted a request for deferred payment of a regulatory fee, further processing of the application or filing or the grant of authority shall be conditioned upon final payment of the regulatory fee and any required penalties for late payment prescribed by the deferral decision. Failure to comply with the terms of the deferral decision shall result in the automatic dismissal of the submission or rescission of the Commission authorization. Further, the Commission shall:

(1) Notify the grantee that the authorization has been rescinded. Upon such notification, the grantee will immediately cease operations initiated pursuant to the authorization; and

(2) Treat as late filed any application resubmitted after the original deadline for filing the application.

(c) Where the procedures described in paragraphs (a) and (b) of this section would not provide a meaningful incentive to pay a regulatory fee that is due or would not be a meaningful sanction for failure to pay such a fee, the Commission may, in its discretion, whether the regulatory fee is required to be paid with an application for an instrument of authorization or otherwise, withhold processing and/or grant of any application or filing made by a person or organization who has failed to make full payment of any regulatory fee due.

(1) Before taking such action, the staff will make a written request for the fee, together with any penalties that may be rendered under this subpart. Such request shall inform the regulatee that failure to pay may result in the Commission withholding action on any application or request filed by the applicant. The staff shall also inform the regulatee of the procedures for seeking Commission review of the staff's fee determination.

(2) If, after final determination that the fee is due, payment is not made in a timely manner, the staff may terminate processing and/or withhold any grant or petition requested by the person or organization subject to the fee payment requirement, until the matter is resolved.

§ 1.1162 General exemptions from regulatory fees.

No regulatory fee established in §§ 1.1152 through 1.1156, unless otherwise qualified herein, shall be required for: (a) Applicants, permittees or licensees in the Amateur Radio Service, *except that* any person requesting a vanity call-sign shall be subject to the payment of a regulatory fee, as prescribed in § 1.1152.

(b) Applicants, permittees, or licensees who qualify as government entities. For purposes of this exemption, a government entity is defined as any state, possession, city, county, town, village, municipal corporation, or similar political organization or subpart thereof controlled by publicly elected or duly appointed public officials exercising sovereign direction and control over their respective communities or programs.

(c) Applicants, permittees or licensees who qualify as nonprofit entities. For purposes of this exemption, a nonprofit entity is defined as an organization possessing nonprofit, tax exempt status under section 501 of the Internal Revenue Code, 26 U.S.C. 501.

(d) Applicants, permittees or licensees in the Special Emergency Radio and Public Safety Radio services.

(e) Applicants, permittees or licensees of noncommercial educational broadcast stations in the FM or TV services, as well as AM applicants, permittees or licensees operating in accordance with § 73.503 of this chapter.

(f) Applicants, permittees, or licensees qualifying under paragraph (e) of this section requesting Commission authorization in any other mass media radio service (except the international broadcast (HF) service), wireless radio service, common carrier radio service, or international radio service requiring payment of a regulatory fee, if the service is used in conjunction with their noncommercial educational broadcast station on a noncommercial educational basis.

(g) Other applicants, permittees or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under paragraph (e) of this section, may be exempt from regulatory fees, or be entitled to a refund, in the following circumstances:

(1) The applicant, permittee or licensee is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant, permittee or licensee of a translator or low power television station operating or proposing to operate a noncommercial educational service who, after grant, provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission; or

(3) An applicant, permittee, or licensee provided a fee refund under § 1.1160 and operating as a noncommercial education station, is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74 of this chapter) or stations in the wireless radio, common carrier, or international services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(h) An applicant, permittee or licensee that is the licensee of an instructional television fixed station (Sec. 74.901 through 74.996 of this chapter) is exempt from regulatory fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

(i) Applications filed in the wireless radio service for the sole purpose of modifying an existing authorization (or a pending application for authorization). However, if the applicant also requests a renewal or reinstatement of its license or other authorization for which the submission of a regulatory fee is required, the appropriate regulatory fee for such additional request must accompany the application.

§ 1.1163 Adjustments to regulatory fees.

(a) For Fiscal Year 1995, the amounts assessed for regulatory fees are set forth in §§ 1.1152 through 1.1156.

(b) For Fiscal year 1996 and thereafter, the Schedule of Regulatory Fees, contained in §§ 1.1152 through 1.1156, may be adjusted annually by the Commission pursuant to section 9 of the Communications Act. 47 U.S.C. 159. Adjustments to the fees established for any category of regulatory fee payment shall include projected cost increases or decreases and an estimate of the volume of licensees or units upon which the regulatory fee is calculated.

(c) The fees assessed shall:

(1) Be derived by determining the full-time equivalent number of employees performing enforcement activities, policy and rulemaking activities, user information services, and international

activities within the Wireless Telecommunications Bureau, Mass Media Bureau, Common Carrier Bureau, Cable Services Bureau, International Bureau and other offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, shared use versus exclusive use, and other factors that the Commission determines are necessary in the public interest;

(2) Be established at amounts that will result in collection, during each fiscal year, of an amount that can reasonably be expected to equal the amount appropriated for such fiscal year for the performance of the activities described in paragraph (c)(1) of this section.

(d) The Commission shall by rule amend the Schedule of Regulatory Fees by proportionate increases or decreases that reflect, in accordance with paragraph (c)(2) of this section, changes in the amount appropriated for the performance of the activities described in paragraph (c)(1) of this section, for such fiscal year. Such proportionate increases or decreases shall be adjusted to reflect unexpected increases or decreases in the number of licensees or units subject to payment of such fees and result in collection of an aggregate amount of fees that will approximately equal the amount appropriated for the subject regulatory activities.

(e) The Commission shall, by rule, amend the Schedule of Regulatory Fees if the Commission determines that the Schedule requires amendment to comply with the requirements of paragraph (c)(1) of this section. In making such amendments, the Commission shall add, delete or reclassify services in the Schedule to reflect additional deletions or changes in the nature of its services as a consequence of Commission rulemaking proceedings or changes in law.

(f) In making adjustments to regulatory fees, the Commission will round such fees to the nearest $5.00 in the case of fees under $1,000.00, or to the nearest $25.00 in the case of fees of $1,000.00 or more.

§ 1.1164 Penalties for late or insufficient regulatory fee payments.

Any late payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee of installment payment which was not paid in a timely manner. A timely fee payment or installment payment is one received at the Commission's lockbox bank by the due date specified by the Commission or by the Managing Director. A payment will also be considered late filed if the payment instrument (check, money order, bank draft or credit card) is uncollectible.

(a) The Commission may, in its discretion, following one or more late filed installment payments, require a regulatee to pay the entire balance of its regulatory fee by a date certain, in addition to assessing a 25 percent penalty.

(b) In cases were a fee payment fails due to error by the payor's bank, as evidenced by an affidavit of an officer of the bank, the date of the original submission will be considered the date of filing.

(c) If a regulatory fee is paid in a timely manner, the regulatee will be notified of its deficiency. This notice will automatically assess a 25 percent penalty, subject the delinquent payor's pending applications to dismissal, and may require a delinquent payor to show cause why its existing instruments of authorization should not be subject to rescission.

(d)(1) Where a regulatee's new, renewal or reinstatement application is required to be filed with a regulatory fee (as is the case with wireless radio services), the application will be dismissed if the regulatory fee is not included with the application package. In the case of a renewal or reinstatement application, the application may not be refiled unless the appropriate regulatory fee plus the 25 percent penalty charge accompanies the refiled application.

(2) If the application that must be accompanied by a regulatory fee is a mutually exclusive application with a filing deadline, or any other application that must be filed by a date certain, the application will be dismissed if not accompanied by the proper regulatory fee and will be treated as late filed if resubmitted after the original date for filing application.

(e) Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment. The application may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty payment.

(f) In instances where the Commission may revoke an existing instrument of authorization for failure to file a regulatory fee, the Commission will provide prior notice to the regulatee of such action and shall allow the licensee no less than 60 days to either pay the fee or show cause why the payment assessed is inapplicable or should otherwise be waived or deferred.

(1) An adjudicatory hearing will not be designated unless the response by the regulatee to the Order to Show Cause presents a substantial and material question of fact.

(2) Disposition of the proceeding shall be based upon written evidence only and the burden of proceeding with the introduction of evidence and the burden of proof shall be on the respondent regulatee.

(3) Unless the regulatee substantially prevails in the hearing, the Commission may assess costs for the conduct of the proceeding against the respondent regulatee. *See* 47 U.S.C. 402(b)(5).

(4) Any regulatee failing to submit a regulatory fee, following notice to the regulatee of failure to submit the required fee, is subject to collection of the fee, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to section 3720A of the Internal Revenue Code, 31 U.S.C. 3717, and to the provisions of the Debt Collection Act, 31 U.S.C. 3717. *See* 47 CFR 1.1901 through 1.1952. The debt collection processes described above may proceed concurrently with any other sanction in this paragraph.

1.1165 Payment by cashier's check for regulatory fees.

Payment by cashier's check may be required when a person or organization makes payment, on one or more occasions, with a payment instrument on which the Commission does not receive final payment and such error is not excused by bank error.

§ 1.1166 Waivers, reductions and deferrals of regulatory fees.

The fees established by sections 1.1152 through 1.1156 may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest. Requests for waivers, reductions or deferrals of regulatory fees for entire categories of payors will not be considered.

(a) Requests for waivers, reductions or deferrals will be acted upon by the Managing Director with the concurrence of the General Counsel. If the request for waiver, reduction or deferral is accompanied by a fee payment, the request must be submitted to the Commission's lockbox bank at the address for the appropriate service set forth in sections 1.1152 through 1.1156 of this subpart. If no fee payment is submitted and the matter is within the scope of the fee rules, the request

should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) Defferals of fees will be granted for a period of six months following the date that the fee is initially due.

(c) Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. Submitted fees will be returned if a waiver is granted. Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.

(d) Petitions for reduction of a fee must be accompanied by the full fee payment less the amount of the requested reduction and FCC Form 159. Petitions for reduction accompanied by a fee payment must be addressed to the Federal Communications Commission, Attention: Petitions, Post Office Box 358835, Pittsburgh, Pennsylvania, 15251–5835.

§ 1.1167 Error claims related to regulatory fees.

(a) Challenges to determinations of an insufficient regulatory fee payment should be made in writing. challenges submitted with a fee payment must be submitted to the same location as the original fee payment, marked ''Attention: Fee Supervisor''. Challenges not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(b) The filing of a petition for reconsideration or an application for review of a fee determination will not relieve licensees from the requirement that full and proper payment of the underlying fee payment be submitted, as required by the Commission's action, or delegated action, on a request for waiver, reduction or deferment. Petitions for reconsideration and applications for review submitted with a fee payment must be submitted to the same location as the original fee payment. Petitions for reconsideration and applications for review not accompanied by a fee payment should be filed with the Commission's Secretary and clearly marked to the attention of the Managing Director.

(1) Failure to submit the fee by the date required will result in the assessment of a 25 percent penalty.

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

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Federal Register

Thursday
June 29, 1995

Part V

Department of Transportation

Coast Guard

33 CFR Part 151, et al.

Noxious Liquid Substances Lists, et al.; Final Rules

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 95–901]

RIN 2115–AF08

Noxious Liquid Substances Lists

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Noxious Liquid Substances (NLSs) regulations to include substances recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and by making minor technical and editorial changes and corrections. This action also updates the current lists of oil-like and non-oil-like NLSs allowed for carriage.

EFFECTIVE DATE: This rule is effective on June 29, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–901), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing a final rule concerning bulk hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 (CGD 95–900) and a final rule (CGD 94–902) concerning cargo entries the Coast Guard has reason to believe are obsolete.

Regulatory Information

Because the United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (MARPOL 73/78), these amendments are required to ensure that the Coast Guard regulations are consistent with revisions to IMO's chemical codes. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) and 553(d)(3) to publish this rule without opportunity for comment, effective upon publication in the **Federal Register**.

Background and Purpose

The Coast Guard is revising its lists of Category D NLSs by including in these lists new entries added to table 30.25–1 of 46 CFR part 30 and tables 1 and 2 of 46 CFR part 153 by a separate rulemaking appearing elsewhere in this edition of the **Federal Register** (CGD 95–900). These are chemicals recently authorized or added to the IMO's Chemical Codes (''International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk'' (IBC Code), and ''Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk'' (BCH Code)). This rulemaking merely updates Coast Guard chemical lists in 33 CFR part 151 and makes a non-substantive editorial change.

Discussion of Amendments

The new entries to be added to § 151.47 are—

(a) 2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8–C10 ester;

(b) Glycerol monoleate;

(c) Lecithin (*soyabean*);

(d) Polybutenyl succinimide; and

(e) Zinc alkenyl carboxamide.

This action also updates the current lists of oil-like and non-oil-like NLSs in § 151.49(a) by deleting the entry ''Dipentene'', and adding the entry ''Heptane (all isomers)'' to follow the entry ''Ethylcyclohexane''. The non-substantive editorial change would substitute Roman type for bold faced type where it appears in the list in § 151.47.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This rulemaking would merely update NLS lists by adding cargoes to the Coast Guard lists and by making a non-substantive editorial change. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant to their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking would merely update NLS lists by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making a non-substantive editorial change. Because it expects the impact of this final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Because this rulemaking would merely update current lists in Coast Guard regulations, there are no Federalism implications.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This rulemaking is an update of current lists to add chemicals already approved under Coast Guard regulation or international law and clearly would have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 151 as follows:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE AND MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

1. The authority citation for part 151, subpart A, continues to read as follows:

Authority: 33 U.S.C. 1321(j)(1)(C) and 1903(b); E.O. 11735, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.46.

§ 151.47 [Amended]

2. In § 151.47, remove all boldfaced type wherever it may appear and add, in its place, Roman type.

3. In § 151.47, add the following new entries in chemically proper alphabetized order:

* * * * *

2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8-C10 ester
Glycerol monooleate
Lecithin (*soyabean*)
Polybutenyl succinimide
Zinc alkenyl carboxamide

* * * * *

§ 151.49 [Amended]

4. In § 151.49(a), remove the entry ''Dipentene'', and add the entry ''Heptane (all isomers)'' to follow the entry ''Ethylcyclohexane''.

Dated: June 15, 1995.

J. C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15750 Filed 6–28–95; 8:45 am]

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46 CFR Parts 30, 150, 151, and 153

[CGD 94–902]

RIN 2115–AF06

Obsolete Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by deleting commodities from its regulations that are no longer viable as bulk liquid cargoes, and cancelling the classifications of obsolete commodities not included in those regulations. This action will help to ensure that Coast Guard requirements are current and that the hazardous materials tables and lists are free of entries that unnecessarily complicate the Coast Guard's regulations.

EFFECTIVE DATE: This rule is effective on August 28, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–900), U.S. Coast Guard Headquarters, 2100 Second Street, NW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Regulatory History

On August 31, 1994, the Coast Guard published an advanced notice of proposed rulemaking (ANPRM) entitled Obsolete Bulk Hazardous Materials in the **Federal Register** (59 FR 45150). The Coast Guard received four letters commenting on the proposal. A public hearing was not requested and one was not held.

Related Rulemakings

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing amendments to its noxious liquid substances list in 33 CFR 151.47 (CGD 95–901) and its bulk hazardous materials lists and tables in 46 CFR parts 30, 150, 151, and 153 (CGD 95–900).

Regulatory Information

This rule removes obsolete commodities from Coast Guard regulations that are no longer viable as bulk liquid cargoes, and cancels the classifications of obsolete commodities not included in those regulations. This action will help to ensure that Coast Guard requirements are current and that the hazardous materials tables and lists are free of entries that unnecessarily complicate the Coast Guard's regulations. Because these commodities are no longer carried in bulk, this action will have no impact on the regulated industry. This action merely serves to remove needless entries from the Coast Guard's lists and tables. Further, the public was provided an opportunity to comment on this action in the ANPRM published on August 31, 1994. In the ANPRM, the Coast Guard proposed commodities for deletion, and asked whether anyone had information on these commodities, or any other commodities that might be appropriate for deletion as well. Four comments were received and are addressed in this rulemaking. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without additional opportunity for comment.

Background and Purpose

The Coast Guard has identified obsolete cargo entries in its various tables and lists, as well as obsolete cargo classifications for entries never entered in those tables and lists. Upon review of the comments received in response to the ANPRM, and further review of its own records, the Coast Guard is deleting these obsolete entries and classifications as appropriate. By deleting obsolete entries in its tables and lists, and cancelling the classification of obsolete commodities, the Coast Guard will reduce an internal administrative burden on its regulatory record keeping and ensure that its requirements reflect current needs. In the ANPRM, the Coast Guard provided a list of commodities thought to be obsolete. That list has been further reviewed by the Coast Guard and four letters commenting on the list were received, as discussed below.

Discussion of Comments and Changes

Coast Guard Review

Further review by the Coast Guard revealed that two of the entries included in the list of obsolete commodities in the ANPRM were identified incorrectly. They are:

a. ''Nitrilotriacetic acid, sodium salt solution'' which should have read ''Nitrilotriacetic acid, trisodium salt solution''; and

b. ''Sodium sulfide solution'' which should have read ''Sodium sulfide solution (15% or less)''.

These commodities are removed by this final rule.

Comments Received

a. Two comments noted that the commodity ethylidene norbornene is produced in large quantity. Neither comment was able to verify whether this commodity is moved in bulk on water. Having obtained information that the

cargo cannot be considered obsolete, the Coast Guard is not removing ethylidene norbornene from its lists and tables.

b. One comment concurred with the proposed deletion of the commodity 2-mercaptobenzothiazole from Coast Guard lists and tables. However, upon further Coast Guard review, it was determined that the commodity should remain. The cargo 2-mercaptobenzothiazole is almost never moved in bulk by itself. Instead, it is often included as a component of mixtures that are moved in bulk. The inclusion of this cargo in Coast Guard regulations as having been classified for carriage in bulk, will eliminate the need to reevaluate its safety considerations when included in new mixtures being shipped. Therefore, the Coast Guard is not deleting the commodity 2-mercaptobenzothiazole from the Coast Guard tables and lists as suggested in the ANPRM.

c. One of the comments concurred with the proposed deletion of the commodity ethyl chlorothioformate. The comment noted that this commodity is moved in Intermodal (IM) portable tanks and it is not expected to be transported in bulk by tank vessel.

d. One comment concurred with the proposed deletion of all commodities on the list, noting that none of the listed commodities are carried by that company's tank vessels.

e. One comment noted that the commodity polydimethylsiloxane is still an active bulk liquid cargo and requested that it be retained in Coast Guard lists and tables. Having obtained information that the cargo cannot be considered obsolete, the Coast Guard is retaining polydimethylisiloxane in its lists and tables.

f. One comment identified various sections of the bulk hazardous materials regulations of title 46 of the Code of Federal Regulations and recommended that they be deleted. This rulemaking addresses only removing obsolete commodities from the Coast Guard tables and lists in title 46. However, the Coast Guard appreciates the information submitted by the comment and is currently reviewing the sections specified by the comment to determine whether they should be addressed in a future rulemaking project.

The commodities being deleted are listed below. The various commodities are divided into several groups, identified by a number in the right hand column, depending upon the list or table in which they appear in the Code of Federal Regulations, or based on Coast Guard information that the commodity is, or may be obsolete. The commodity status groups are identified following the commodity list.

LIST OF COMMODITIES PROPOSED FOR DELETION

Commodity list	Commodity status group
Acetyl tributyl citrate	2
Alkenylsuccinic acid	2
Alkyl succinate formaldehyde hydroxyamino condensate (3.2% or less) (LOA).	2
Aminoethyl piperazine H.H.	6
Ammonium phosphate solution	5
Amyl tallate	2
Aqueous waste solution (*from the manufacture of a trade name pesticide*).	6
ARCOHIB C–112	6
BASAGRAN (*bentazon-sodium salt solution).*	6
Benzyl chloride	4
Bicyclic terpenel polyamine amide salt (LOA).	2
n-Butylamine (*under the entry* Butylamine (all isomers)).	1,3,4
Butyl by-products (*containing butyl formate, ethyl butyrate, ethyl propionate and methyl butyrate*).	6
(crude) Butyraldehyde	1,3,4
C–6 Aldehydes (mixed) (*distilled croton oil*).	6
Calcium alkylphenate (LOA)	2
Calcium amino nonyl phenolate (LOA).	2
Calcium carboxylate (LOA)	2
Carbonate and Carbolate waste water.	6
Carbon black base (*printing ink base material*).	2
Chlorohydrins (*crude*)	3,4
Cleaning spirit (*unleaded*)	2
Cresylic acid tar	1
Crude hydrocarbon feedstocks (containing ethyl ether).	6
Cycloaliphatic resins	2
Cyclohexane oxidation product acid water, 50% aqueous solution (*trade names:* ''COP Acid water'', ''Acid Water EP306'').	6
Cyclopentadiene, Styrene, Benzene mixture.	1
iso-Decyl acrylate (*under the entry* Decyl acrylate (all isomers)).	1,3,4
Depentanized aromatic stream	6
Diammonium salt of Zinc ethylenediamine tetraacetic acid solution.	4
2,4-Dichlorophenoxyacetic acid, dimethylamine salt solution (70% or less).	1
Didecyl dimethyl ammonium chloride, Ethanol mixture solution.	6
Dimer acid	7
Dinitriles	6
Diolefin stream	6
Di(octylphenyl)amine	2
1, 4-Dioxane, Butylene oxide, Nitromethane mixture.	6
DMD–2 (''Dupont Metal Deactivator No. 2'').	6
Dodecyldimethylamine, Tetradecyldimethylamine mixture.	1,3,4
Ethyl chlorothioformate	7
Ethylene dichloride, 1, 1, 2-Trichloroethane mixture.	1
Fatty acid amides (LOA)	2
Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution (*other name:* Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution).	1,5
Glycols, Resins, & Solvents mixture.	2
Heartcut distillate raffinate	6
Heavy aromatic concentrate	6
High molecular weight Lithium amine—amide mixture (*other name:* Polyamine amide mixture).	6
Hydrochloric acid, spent	1,3
Isopentaldehyde	3
Jet fuel: JP–1	2
Jet fuel: JP–3	2
Meleic anhydride copolymer (LOA).	2
Manganese sulfate solution	6
Metallo organic compound containing Barium, Calcium and Sulfur.	6
Methylamine	1,3
4, 4′-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture.	6
Methyl formal (*dimethyl formal*)	2
alpha-Methyl styrene, Cumene	6
Methyl styrene, Indenes, Alkyl benzenes.	6
Nitrilotriacetic acid, trisodium salt solution (*other name:* Trisodium nitrilotriacetate (''NTA–150 Chelant'')).	6
Octyl epoxytallate	2
Oil, edible: Babassu	2
Oil, edible: Grapeseed	2
Oil, edible: Mustard seed	2
Oil, misc: Adsoption	2
Oil, misc: Aviation F2300	2
Oil, misc: Croton	2
Oil, misc: Range	2
Oil, misc: Resin	2
Oil, misc: Resinous petroleum (*possible other name:* Resinous petroleum residue).	2
Oil, misc: Spray	2
Oil, misc: Tanner's	2
Oil, misc: White (mineral)	2
Oil, misc: Wood	2
Paraldehyde	4
Pentene/Miscellaneous hydrocarbon mixture (*hydrogenated pyrolysis oils*).	6
3-Pentenenitrile	6
3-Pentenenitrile (crude)	6
PETROX 214	6
Phosphorus, white (*elemental*)	1,3

LIST OF COMMODITIES PROPOSED FOR DELETION—Continued

Commodity list	Commodity status group
Polyalkenyl succinic anhydride amine (LOA).	2
Polyamine, amide mixture (LOA) (*other name:* High molecular weight Lithium amine—amide mixture).	2
Polyester of alkenyl succinic anhydride caboxylic acid, and Pentaerythritol.	6
Polystyrene dialkyl maleate (LOA)	2
Propanolamine	1,3,4
Propanol, Propyl acetate mixture	6
Pro-Silage (*mixture of ammonium hydroxide, ammonium phosphate and molasses in water*).	6
Reaction product of Styrene and Dialkyldithiophosphoric acid.	6
Reformer prefractionator bottoms	6
Resinous petroleum residue (*possible other name:* Oil, misc: Resinous petroleum).	6
Salicylaldehyde	1
Sodium salt of Ferric hydroxyethylethylenediamine triacetic acid solution (*other name:* Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution.	1,5
Sodium sulfide solution (15% or less).	1,4
Sodium sulfite, bisulfite, formate and thiosulfite solution (25% or less) (CO–PRODUCT (B)).	6
Sodium sulfonate	2
Styrene tar	1
T–77 Bottoms	6
T–150 Bottoms	6
TRET–O–LITE PR–980	6
TRET–O–LITE L–1576	6
Triisopropanolamine	1
Trisodium nitrilotriacetate (''NTA–150 Chelant'') (*other name:* Nitrilotriacetic acid, trisodium salt solution).	6
Vinyl acetate-fumarate copolymer (LOA).	2
Waxes: Petroleum	2
Wool grease	2
Zinc dialkyldithiophosphate (LOA) (*not to be confused with* Zinc alkyl dithiophosphate (C3–C14) *or* Zinc alkaryl dithiophosphate (C7–C16)).	

Identification of Commodity Status Groups

1. Cargoes identified by the Cargo Classification Working Group of the Chemical Transportation Advisory Committee (CTAC) as possibly inactive. These entries may also appear in Coast Guard tables and lists. If so, this is indicated by additional commodity status group number(s).

2. Entries that appear in Table 30.25–1, 46 CFR part 30. Where the Coast Guard has reason to believe the entry is a lube oil additive or a lube oil additive component, it is identified with ''(LOA)''.

3. Entries that appear in Table 151.05, 46 CFR part 151.

4. Entries that appear in Table 1, 46 CFR part 153.

5. Entries that appear in Table 2, 46 CFR part 153.

6. Commodities that have been evaluated for carriage but have not been included in the regulations, and for which the Coast Guard has information indicating that they are no longer viable bulk liquid cargoes.

7. Commodities that have been evaluated or proposed for evaluation but which had not been included in the regulations, and for which the Coast Guard has no information as to their viability as bulk liquid cargos.

Commodities Appearing in the IMO Chemical Codes and Coast Guard Regulations

At future IMO meetings, the U.S. will propose that those cargoes listed below be removed from the IMO Chemical Codes. If the proposal for removal from the IMO Codes is adopted, those cargoes listed below will be removed from Coast Guard regulations in a future rulemaking action:

(a) Benzyl chloride.
(b) n-Butylamine.
(c) Chlorohydrins (*crude*).
(d) Cresylic acid tar.
(e) iso-Decyl acrylate.
(f) Dodecyldimethylamine, Tetradecyldimethyl-amine mixture.
(g) Ferric hydroxyethylethylene diamine triacetic acid, trisodium salt solution.
(h) Nitrilotriacetic acid, trisodium salt solution.
(i) Paraldehyde.
(j) Phosphorus, white (*elemental*).
(k) Propanolamine.
(l) Sodium sulfide solution (15% or less).
(m) Triisopropanolamine.

Commodities Previously Permitted for Carriage in Accordance with Classification Letter

The cargo classification of the following commodities are cancelled; they are no longer permitted to be carried in bulk by water mode as cargoes:

Aminoethyl piperazine H.H.
Aqueous waste solution (*from the manufacture of a trade name pesticide*)
ARCOHIB C–112
BASAGRAN (*bentazon-sodium salt solution*)
Butyl by-products (*containing butyl formate, ethyl butyrate, ethyl propionate and methyl butyrate*)
C–6 Aldehydes (mixed) (*distilled croton oil*)
Carbonate and Carbolate waste water
Crude hydrocarbon feedstocks (containing ethyl ether)
Cyclohexane oxidation product acid water, 50% aqueous solution (*trade names:* ''COP Acid Water'', ''Acid Water EP306'')
Dependanized aromatic stream
Didecyl dimethyl ammonium chloride, Ethanol mixture solution
Dimer acid
Dinitriles
Diolefin stream
1, 4-Dioxane, Butylene oxide, Nitromethane mixture
DMD–2 (''Dupont Metal Deactivator No. 2'')
Ethyl chlorothioformate
Heartcut distillate raffinate
Heavy aromatic concentrate
High molecular weight Lithium amine—amide mixture (*other name:* Polyamine amide mixture)
Manganese sulfate solution
Metallo organic compound containing Barium, Calcium and Sulfur
4,4′-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture
alpha-Methyl styrene, Cumene
Methyl styrene, Indenes, Alkyl benzenes
Nitrilotriacetic acid, trisodium salt solution (*other name:* Trisodium nitrilotriacetate (''NTA–150 Chelant''))
Pentene/Miscellaneous hydrocarbon mixture (*hydrogenated pyrolysis oils*)
3-Pentenenitrile
3-Pentenenitrile (crude)
PETROX 214
Polyester of alkenyl succinic anhydride caboxylic acid, and Pentaerythritol
Propanol, Propyl acetate mixture
Pro-Silage (*mixture of ammonium hydroxide, ammonium phosphate and molasses in water*)
Reaction product of Styrene and Dialkyldithio-phosphoric acid
Reformer prefractionator bottoms
Resinous petroleum residue (*possible other name:* Oil, misc: Resinous petroleum)
Sodium sulfite, bisulfite, formate and thiosulfite solution (25% or less) (CO–PRODUCT (B))
T–77 Bottoms
T–150 Bottoms
TRET-O-LITE PR–980
TRET-O-LITE L–1576
Trisodium nitrilotriacetate (''NTA–150 Chelant'') (*other name:* Nitrilotriacetic acid, trisodium salt solution)

The Coast Guard intends to periodically review its regulations to determine whether any commodities in its tables and lists in titles 33 and 46 of

the Code of Federal Regulations are no longer manufactured or moved in bulk by vessel, and would therefore be appropriate for deletion. Toward that end, the Coast Guard requests the continued assistance of interested parties in identifying obsolete entries and classifications in its regulations. Commodities identified as obsolete will be addressed in future rulemakings.

Regulatory Evaluation

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

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking merely updates the Coast Guard's lists and tables by deleting obsolete commodities. Because it expects the impact of this final rule to be minimal, the Coast Guard entities under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

This rulemaking updates the Coast Guard's tables and lists by deleting obsolete cargoes. Therefore this rulemaking has no federalism implications.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This rulemaking is merely a revision of tables and lists deleting obsolete chemicals currently approved for carriage by tankbarge or tank ship and clearly will have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 150, 151, and 153 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103; 49 CFR 1.46; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat 515.

§ 30.25–1 [Amended]

2. In § 30.25–1, amend table 30.25–1 by removing the following entries in their entirety:

a. Acetyl tributyl citrate
b. Alkenylsuccinic acid
c. Alkyl succinate formadehyde hydroxyamino condensate (3.2% or less)
d. Amyl tallate
e. Bicyclic terpenel polyamine amide salt
f. Calcium alkylphenate
g. Calcium amino nonyl phenolate
h. Calcium carboxylate
i. Carbon black base (*printing ink base material*)
j. Cleaning spirit (*unleaded*)
k. Cycloaliphatic resins
l. Di(octylphenyl)amine
m. Fatty acid amides
n. Glycols, Resins, and Solvents mixture
o. Jet fuel: JP–1
p. Jet fuel: JP–3
q. Maleic anhydride copolymer
r. Methyl formal (*dimethyl formal*)
s. Octyl epoxytallate
t. Oil, edible: Babassu
u. Oil, edible: Grapeseed
v. Oil, edible: Mustard seed
w. Oil, misc: Adsoption
x. Oil, misc: Aviation F2300
y. Oil, misc: Croton
z. Oil, misc: Range
aa. Oil, misc: Resin
bb. Oil, misc: Resinous petroleum
cc. Oil, misc: Spray
dd. Oil, misc: Tanner's
ee. Oil, misc: White (mineral)
ff. Oil, misc: Wood
gg. Polyalkenyl succinic anhydride amine
hh. Polyamine, amide mixture
ii. Polystyrene dialkyl maleate
jj. Sodium sulfonate
kk. Vinyl acetate-fumarate copolymer
ll. Waxes: Petroleum
mm. Wool grease
nn. Zinc dialkyldithiophosphate

PART 150—COMPATIBILITY OF CARGOES

3. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table I to Part 150 [Amended]

4. In table I, remove the following entries in their entirety:

a. Actyl tributyl citrate
b. Amyl tallate
c. Carbon black base
d. Cycloaliphatic resins

e. Cyclohexane oxidation product acid water
f. Cyclopentadiene, Styrene, Benzene mixture
g. Diammonium salt of Zinc EDTA solution
h. Didecyl dimethyl ammonium chloride, Ethanol mixture solution
i. Ethyl chlorothioformate
j. Fatty acid amides
k. Glycols, Resins, and Solvents mixture
l. Hydrochloric acid, spent
m. Jet fuel: JP–1
n. Jet fuel: JP–3
o. Maleic anhydride copolymer
p. Methylamine
q. 4,4′-Methylenediniline (43% or less), Polymetnylene polypheylamine, o-Dichlorobenzene mixture
r. Methyl formal
s. Octyl expoxytallate
t. Oil, edible: Babassu
u. Oil, edible: Grapeseed
v. Oil, misc: Adsoption
w. Oil, misc: Range
x. Oil, misc: Resin
y. Oil, misc: Resinous petroleum
z. Oil, misc: Spray
aa. Oil, misc: Tanner's
bb. Oil, misc: White (mineral)
cc. 3-Pentenenitrile
dd. Polyalkenyl succinic anhydride amine
ee. Salicylaldehyde
ff. Vinyl acetate-fumarate copolymer

Table II to Part 150 [Amended]

5. In Table II, in the Group indicated, remove the following entire:

Group 0. Unassigned cargoes.
a. Ethyl chlorothioformate
Group 1. Non-oxidizing mineral acids.
a. Hydrochloric acid, spent
Group 4. Organic acids.
a. Cyclohexane oxidation product acid water
Group 7. Aliphatic amines.
a. Methylamine
Group 9. Aromatic amines.
a. 4,4′-Methylenedianiline (43% or less), Polymethylene polyphenylamine, o-Dichlorobenzene mixture
Group 19. Aldehydes.
a. Salicylaldehyde
Group 30. Olefins.
a. Cyclopentadiene, Styrene, Benzene mixture
Group 31. Paraffins.
a. Cycloaliphatic resins
Group 33. Miscellaneous Hydrocarbon Mixtures
a. Carbon black base
b. Fatty acid amides
c. Glycols, Resins, & Solvents mixture
d. Jet fuel: JP–1
e. Jet fuel: JP–3
f. Maleic anhydride copolymer
g. Oil, misc: Adsoption
h. Oil, misc: Range
i. Oil, misc: Resin
j. Oil, misc: Resinous petroleum
k. Oil, misc: Spray
l. Oil, misc: Tanner's
m. Oil, misc: White (mineral)
n. Polyalkenyl succinic anhydride amine
Group 34. Esters
a. Acetyl tributyl citrate
b. Amyl tallate
c. Octyl epoxytallate
d. Oil, edible: Babassu
e. Oil, edible: Grapeseed
f. Vinyl acetate-fumarate copolymer
Group 37. Nitriles.
a. 3-Pentenenitrile
Group 41. Ethers.
a. Methyl formal
Group 43. Miscellaneous water solutions.
a. Diammonium salt of Zinc EDTA solution
b. Didecyl dimethyl ammonium chloride, Ethanol mixture solution

Appendix I to Part 150 [Amended]

6. In appendix I (b), remove the following words: ''Ethyl Chlorothioformate (0) is not compatible with Groups 5, 6, 7, 8, and 9.''

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

7. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3703; 49 CFR 1.46.

Table 151.05 [Amended]

8. In table 151.05, remove the following entries in their entirety:

a. Butyraldehydes (crude)
b. Hydrochloric acid, spent
c. Isopentaldehyde
d. Methylamine (anhydrous)

§ 151.12–5 [Amended]

9. In § 151.12–5, remove the entry ''Chlorohydrins (*crude*)''.

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

10. The authority citation for part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

Table 1 [Amended]

11. In Table 1, remove the following entries in their entirety:

a. (crude) Butyraldehyde
b. Diammonium salt of Zinc ethylenediamine tetraacetic acid solution

Table 2 to Part 153 [Amended]

12. In Table 2, remove the entry ''Ammonium phosphate solution''.

Dated: June 15, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 95–15751 Filed 6–28–95; 8:45 am]

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46 CFR Parts 30, 150, 151, and 153

[CGD 95–900]

RIN 2115–AF07

Bulk Hazardous Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations on carriage of bulk hazardous materials by adding cargoes recently authorized for carriage by the Coast Guard or added to the International Maritime Organization's (IMO) Chemical Codes and by making minor technical and editorial changes and corrections. This action will update the bulk hazardous materials tables and better inform persons shipping a bulk hazardous material of that material's compatibility and special handling requirements.

EFFECTIVE DATE: This rule is effective on August 28, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 95–900), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis G. Payne, Hazardous Materials Branch, (202) 267–1577.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Curtis G. Payne, Project Manager, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Related Rulemaking

Elsewhere in this edition of the **Federal Register**, the Coast Guard is publishing amendments to its noxious liquid substances lists in 33 CFR 151.47 (CGD 95–901). Also in this edition of the **Federal Register**, a final rule (CGD 94–902) is published concerning cargo entries the Coast Guard has reason to believe are obsolete.

Regulatory Information

Because the United States is a party to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the protocol of 1978 relating thereto (MARPOL 73/78), these amendments are required to ensure that the Coast Guard regulations are consistent with revisions to IMO's chemical codes. Accordingly, the Coast Guard finds that good cause exists under 5 U.S.C. 553(b) to publish this rule without opportunity for comment.

Background and Purpose

This rulemaking updates various Coast Guard hazardous materials tables in 46 CFR parts 30, 150, 151, and 153 to include new chemicals and requirements authorized by Coast Guard regulations or international law. This rulemaking would also make other non-substantive editorial changes and corrections.

Discussion of Amendments

(a) A number of new cargo entries are added to table 30.25–1, tables I and II and appendix I of part 150, and tables 1 and 2 of part 153, as appropriate. These include cargoes recently authorized by the Coast Guard and cargoes to be included in the IMO Chemical Codes (''International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk'' (IBC Code), and ''Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk'' (BCH Code)), but not yet included in Coast Guard regulations. These include new entries approved at an IMO subcommittee meeting of September 13–17, 1993 (BCH 23) and October 19–23, 1994 (BCH 24).

(b) The ''Compatibility of Cargoes'' tables in part 150 are amended to include the chemicals added by the final rule to the hazardous materials tables in parts 30 and 153. This rule also corrects several current cargo names and cross-references other entries.

(c) The Coast Guard was informed of two erroneous assignments in the current table. They are cresylic acid tar, currently shown as assigned to Group 5 (Caustics) and potassium thiosulfate, currently shown as assigned to Group 0 (Unassigned cargoes). The entry for cresylic acid tar is corrected to reflect its assignment to Group 21 (Phenols, Cresols), and the entry for potassium thiosulfate solution is corrected to reflect its assignment to Group 43 (Miscellaneous Water Solutions). The Coast Guard is appreciative of the assistance it received in discovering these errors.

(d) Section 151.05–2 is revised to address the change for tank barges certificated to carry benzene and benzene containing cargoes from the restricted gauging requirements in § 151.15–10 to closed gauging requirements, and, for tank barges certificated to carry butyl acrylate cargoes, from open to restricted gauging requirements. Section 151.05–2 was added in an August 31, 1994, final rule (CGD 94–900; 59 FR 45136) to require that such tank barges comply with the gauging requirements of Table 151.05 by August 15, 1998. The revision clarifies that until August 15, 1998, those barges must either meet the new gauging requirements of Table 151.05, or the previous gauging requirements in § 151.15–10. Also, the spelling of the word ''acrylate'' is corrected.

(e) In its continued effort to maintain consistency between the requirements of the tank ship regulations (part 153) and the tankbarge regulations (part 151) where applicable, the Coast Guard proposes to add special requirement 151.50–73, ''Chemical protective clothing'' to the entries in table 151.05 of part 151 of the tankbarge regulations for the commodities listed below:

(1) Acetic acid
(2) Acetic anhydride
(3) Coal tar naphtha solvent
(4) Coal tar pitch (molten)
(5) Formic acid
(6) Phosphoric acid
(7) Propionic acid
(8) Sodium chlorate solution (50% or less)

This change is in conformance with the current special requirement for these commodities found in tank ship regulations at § 153.933, ''Chemical protective clothing''.

(f) The carriage requirements of two entries in table 1 of part 153, diethyl sulfate and sodium silicate solution, are changed. The Coast Guard has received information from a manufacturer of the commodity diethyl sulfate demonstrating the need for the protective clothing special requirement of § 153.933. The Coast Guard is adding the special requirement to the entry for that commodity. The entry sodium silicate solution was reviewed by the IMO at BCH 24 and determined to be a nonflammable water solution. Therefore, the fire protection requirement for this entry was removed by the IMO. This same action is adopted in this final rule.

(g) Other minor corrections or modifications are made as required to the various lists and tables.

(h) In appendix I to this final rule, the Coast Guard is providing information intended to provide mariners with insight into revisions that may be addressed in future rulemaking actions. The appendix will not appear in the Code of Federal Regulations, and does not propose changes to current requirements. The appendix is provided for informational purposes only. One issue addressed in the appendix involves the potential for incompatible stowage of isocyanate cargoes, Group 12 and water solutions of chemical cargoes. Shippers of such cargoes should review the appendix for further information.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). This rulemaking updates the Coast Guard's bulk hazardous materials table by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive editorial changes. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore is exempt from the requirements of the Act. Although this rule is exempt, the Coast Guard has reviewed it for potential impact on small entities.

This rulemaking updates the Coast Guard's bulk hazardous materials table by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making non-substantive editorial changes. Because it expects the impact of this final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

This rulemaking updates chemical tables by adding cargoes recently authorized by the Coast Guard or added to the IMO Chemical Codes and by making other non-substantive editorial changes and corrections. Therefore this rulemaking has no federalism implications.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this final rule is categorically excluded from further environmental documentation. This rulemaking updates tables listing chemicals already approved under Coast Guard regulation or international law and clearly would have no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 150

Hazardous materials transportation, Marine safety, Occupational safety and health, Reporting and recordkeeping requirements.

46 CFR Part 151

Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 153

Administrative practice and procedure, Cargo vessels, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements, Water pollution control.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 30, 150, 151, and 153 as follows:

PART 30—GENERAL PROVISIONS

1. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. 5103; 49 CFR 1.46; Section 30.01–5 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat 515.

§ 30.25–1 [Amended]

2. In § 30.25–1, table 30.25–1 is amended as follows:

a. In the ''Cargoes'' column, remove the ''+'' symbols that precede the cargo entries.

b. For the entry ''Amyl methyl ketone'', in the ''Pollution category'' column, remove the letter ''C'' and add, in its place, the letter ''D''.

c. In the ''Cargoes'' column, remove the words ''Calcium long chain phenolic amine (C8–C40)'' and add, in their place, the words '' · Calcium long chain alkyl phenolic amine (C8–C40)''.

d. In the ''Cargoes'' column, remove the words ''Diethylene glycol butyl ether acetate'' and add, in their place, the words'' Diethylene glycol butyl ether acetate, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether acetate''.

e. In the ''Cargoes'' column, remove the words ''Dimethyl polysiloxane'' and add, in their place, the words ''· Dimethylpolysiloxane, *see* Polydimethylsiloxane''.

f. In the ''Cargoes'' column, remove the words ''Long chain alkylphenate/ Phenol sulfide'' and add, in their place, the words ''· Long chain alkylphenate/ Phenol sulfide mixture''.

g. For the entry ''Metolachlor'', in the ''Pollution category'' column, remove the symbol ''@''.

h. In the ''Cargoes'' column, remove the words ''Polyolefin amide alkeneamine molybdenum oxysulfide'' and add, in their place, the words ''· Polyolefin amide alkeneamine/ Molybdenum oxysulfide mixture''.

i. In the ''Cargoes'' column, remove the word ''Tetradecanol'' and add, in its place, the words ''· Tetradecanol, *see* Alcohols (C13+)''.

3. In § 30.25–1, table 30.25–1 is further amended by adding the following new entries in chemically proper alphabetized order:

TABLE 30.25–1.—LIST OF FLAMMABLE AND COMBUSTIBLE BULK LIQUID CARGOES

Cargoes	Pollution category
* * * * *	
2-Ethyl-2-(hydroxymethyl) propane-1,3-diol, C8–C10 ester.	D
* * * * *	
Glycerol monooleate	D
* * * * *	
Lecithin (*soyabean*)	[D]
* * * * *	
N-Methylglucamine solution (70% or less).	III
* * * * *	
n-Pentyl propionate	C
* * * * *	
Polybutenyl succinimide	D
* * * * *	
Soyabean oil (epoxidized)	[D]
* * * * *	
Zinc alkenyl carboxamide	D
* * * * *	

4. In § 30.25–1, in the footnotes to table 30.25–1, remove the words ''+ denotes newly added products.''.

PART 150—COMPATIBILITY OF CARGOES

5. The authority citation for part 150 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703, 49 CFR 1.45, 1.46. Section 150.105 issued under 44 U.S.C. 3507; 49 CFR 1.45.

Table I to Part 150 [Amended]

6.Table I is amended as follows:

a. Remove all bold-faced type wherever it may appear and add, in its place, Roman type.

b. In the ''Chemical name'' column, remove the ''+'' symbols that precede chemical name entries.

c. For the entry ''Alkanes (C6–C9)'', in the ''Related CHRIS codes'' column, remove the code ''HXX'' and add, in its place, the code ''HXS''.

d. For the entry ''Alkanes (c10+)'', in the ''CHRIS code'' column, add the code ''ALJ''.

e. In the ''Chemical name'' column, remove the work ''Butene'' and add, in its place, the words ''Butene, *see* Butylene''.

f. In the ''Chemical name'' column, remove the words ''n-Butyl butyrate'' and add, in their place, the words ''Butyl butyrate'', and in the ''CHRIS code'' column for the new entry, remove the code ''BUB'' and add, in its place, the code ''BBA'', and in the ''Related CHRIS codes'' column for the new entry, add the codes ''BUB/BIB''.

g. Delete the entry ''iso-Butyl isobutyrate'' in its entirety.

h. In the ''Chemical name'' column, remove the words ''Calcium bromide solution'' and add, in their place, the words '' Calcium bromide solution, *see* Drilling brines'', and in the ''Related CHRIS codes'' column for the new entry, remove the code ''CBM'', and in its place, add the code ''DRB''.

i. In the ''Chemical name'' column, remove the words ''Calcium long chain phenolic amine (C8–C40)'' and add, in their place, the words ''Calcium long chain alkyl phenolic amine (C8–C40)''.

j. In the ''Chemical name'' column, remove the words ''Cresylic acid, sodium salt solution'' and add, in their place, the words ''Cresylic acid, sodium salt solution, *see* Cresylate spent caustic''.

k. For the entry ''Cresylic acid tar'', in the ''Group No.'' column, remove the number ''5'' and add, in its place, the number ''21''.

1. In the ''Chemical name'' column, remove the word ''Cumene'' and add, in its place, the words ''Cumene *(isopropyl benzene), see* Propylbenzene'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PBY''.

m. For the entry ''Decaldehyde'', in the ''Related CHRIS codes'' column, remove the codes ''DA/DAL'' and add, in their place, the codes ''IDA/DAL''.

n. For the entry ''Decane'', in the ''CHRIS code'' column, remove the code ''DDC'' and add, in its place, the code ''DCC'', and in the ''Related CHRIS codes'' column, add the code ''ALJ''.

o. Move the entry ''Diphenylamine, reaction product with 2,2,4-Trimethylpentene'' in its entirety to follow the entry ''Diphenylamines, alkylated''.

p. In the ''Chemical name'' column, remove the word ''Diethylaminoethanol'' and add, in its place, the words ''Diethylaminoethanol, *see* Diethylethanolamine''.

q. In the ''Chemical name'' column, remove the words ''Diethylene glycol butyl ether'' and add, in their place, the words ''Diethylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether'', and in the Related CHRIS codes'' column for the new entry, add the code ''PAG''.

r. In the ''Chemical name'' column, remove the words ''Diethylene glycol butyl ether acetate'' and add, in their place, the words ''Diethylene glycol butyl ether acetate, *see* Poly(2–7)alkylene glycol monoalkyl(C1–C6) ether acetate'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PAF''.

s. In the ''Chemical name'' column, remove the words ''Diethylene glycol ethyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PAG''.

t. In the ''Chemical name'' column, remove the words Diethyl ether'' and add, in their place, the words Diethyl ether, *see* Ethyl ether''.

u. In the ''Chemical name'' column, remove the words ''Dipropylene glycol methyl ether'' and add, in their place, the words ''Dipropylene glycol methyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PAG''.

v. For the entry ''2-Dodecenylsuccinic acid, dipotassium salt solution'', in the ''CHRIS code'' column, add the code ''DSP''.

w. Move the entry ''Dodecylamine, Tetradecylamine mixture'' in its entirety to follow the entry ''Dodecyl alcohol, *see* Dodecanol''.

x. In the ''Chemical name'' column, remove the word ''2-Ethoxyethanol'' and add, in its place, the words ''2-Ethoxyethanol, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, remove the code ''EGE'' and add in its place, the codes ''EGC/EGE''.

y. In the ''Chemical name'' column, remove the words ''Ethylene glycol butyl ether'' and add, in their place, the words ''Ethylene glycol butyl ether, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''EGC''.

z. In the ''Chemical name'' column, remove the words ''Ethylene glycol tert-butyl ether'' and add, in their place, the words ''Ethylene glycol tert-butyl ether, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''EGC''.

aa. In the ''Chemical name'' column, remove the words ''Ethylene glycol ethyl ether'' and add, in their place, the words ''Ethylene glycol ethyl ether, *see* Ethylene glycol monalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, remove the code ''EEO'' and add in its place, the codes ''EGC/EEO''.

bb. In the ''Chemical name'' column, remove the words ''Ethylene glycol ethyl ether acetate'' and add, in their place, the words ''Ethylene glycol ethyl ether acetate, *see* Ethoxyethyl acetate'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''EEA''.

cc. In the ''Chemical name'' column, remove the words ''Ethylene glycol isopropyl ether'' and add, in their place, the words ''Ethylene glycol isopropyl ether, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''EGC''.

dd. In the ''Chemical name'' column, remove the words ''Ethylene glycol methyl ether'' and add, in their place, the words ''Ethylene glycol methyl ether, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''EGC''.

ee. In the ''Chemical name'' column, remove the words ''Ethylene glycol propyl ether'' and add, in their place, the words Ethylene glycol propyl ether, *see* Ethylene glycol monoalkyl ethers'', and in the ''Related CHRIS codes'' column, for the new entry add the code ''EGC''.

ff. For the entry ''Fatty acid amides'', in the ''CHRIS code'' column add the code ''FAA''.

gg. For the entry ''Hexamethylenediamine adipate solution'' in the ''Related CHRIS codes'' column, remove the code ''HMD''.

hh. In the ''Chemical name'' column, remove the word ''Isopropylbenzene'' and add, in its place, the words ''Isopropylbenzene (*cumene*), *see* Propylbenzene'', and in the ''Related CHRIS codes'' column for the new entry, add the codes ''PBY/CUM''.

ii. In the ''Chemical name'' column, remove the words ''Long chain alkylphenate/Phenol sulfide'' and add, in their place, the words ''Long chain alkylphenate/Phenol sulfide mixture''.

jj. For the entry ''N-Methyl-2-pyrrolidone'', in the ''Group No.'' column, add a superscript ''2'' before the number ''9'' to read ''^{2}9''.

kk. For the entry ''Nitropropane, Nitroethane mixture'', in the ''CHRIS code'' column, remove the code ''NNM'', and in the ''Related CHRIS codes'' column, add the codes ''NNM/NNL''.

11. Under the entry ''Oil, edible'', remove the entry ''Lanolin'' in its entirety.

mm. For the entry ''Pine oil'', in the ''CHRIS code'' column, remove the code ''POL'' and add, in its place, the code ''PNL''.

nn. In the ''Chemical name'' column, remove the words ''Polyolefin amide alkeneamine molybdenum oxysulfide'' and add, in their place, the words

''Polyolefin amide alkeneamine/ Molybdenum oxysulfide mixture''.

oo. For the entry ''Poly(5+)propylene'', in the ''CHRIS code'' column, add the code ''PLQ''.

pp. For the entry ''Potassium thiolsulfate solution'', in the ''Group No.'' column, remove the number ''0'' and add, in its place, the number ''43''.

qq. For the entry ''Propylbenzene'', in the ''CHRIS code'' column, remove the code ''PBZ'' and add, in its place, the code ''PBY'', and in the ''Related CHRIS codes'' column, add the codes ''PBZ/CUM''.

rr. For the entry ''Tallow nitrile'', in the ''CHRIS code'' column, add the code ''TAN''.

ss. In the ''Chemical name'' column, remove the word ''Tridecanol'' and add, in their place, the words ''*Tridecanol, see* Alcohols (C13+)''.

tt. In the ''Chemical name'' column, remove the words ''Triethylene glycol butyl ether'' and add, in their place, the words ''Triethylene glycol butyl ether, *see* Poly(2–8)alkylene glycol monoalkyl(C1–C6) ether'', and in the ''Related CHRIS codes'' column for the new entry, add the code ''PAG''.

uu. For the entry ''2,2,4-Trimethyl-1,3-pentanediol diisobutyrate'', in the ''CHRIS code'' column, add the code ''TMQ''.

vv. In the ''Chemical name'' column, remove the word ''Undecanol'' and add, in their place, the words ''*Undecanol, see* Undecyl alcohol''.

ww. For the entry ''Valeraldehyde'', in the ''CHRIS code'' column, add the code ''VAK'', and in the ''Related CHRIS codes'' column, remove the codes ''IVA/VAL/VAK'' and add, in their place, the words ''IVA/VAL''.

xx. For the entries ''Decyloxytetrahydro-thiophene dioxide'', ''Dodecyl hydroxypropyl sulfide'', ''Lactic acid'', ''Long chain alkaryl sulfonic acid (C16–C60)'' and ''Tall oil fatty acid, barium salt'', in the ''Group No.'' column add a superscript ''2'' to the number ''0'' to read ''^{2}0'' for each entry.

8. In Table I, add the following new entries in chemically proper alphabetized order: Table I—Alphabetical List of Cargoes

* * * * *

TABLE 1.—ALPHABETICAL LIST OF CARGOES

Chemical name	Group No.	CHRIS code	Related CHRIS codes
* * * * *	*		*
iso- & cyclo-Alkanes (12+)	31		
* * * * *	*		*
Ammonia, aqueous, *see* Ammonium hydroxide	6	AMH	
* * * * *	*		*
Apple juice	43		
* * * * *	*		*
Butyl stearate	34		
* * * * *	*		*
Calcium carbonate slurry	34		
* * * * *	*		*
Calcium hydroxide slurry	5	COH	
* * * * *	*		*
Clay slurry, *see also* Kaolin clay slurry	43		
* * * * *	*		*
Dihexyl phthalate	34		
* * * * *	*		*
1,4-Dihydro-9,10-dihydroxy anthracene, disodium salt solution	5	DDH	
* * * * *	*		*
Diphenylamine, reaction product with 2,2,4-trimethylpentene	7	DAK	
* * * * *	*		*
Ethylene carbonate	34		
* * * * *	*		*
2-Ethyl-2-(hydroxymethyl)propane-1,3-diol, C8–C10 ester	34	EHD	
* * * * *	*		*
Glycerol monooleate	20	GMO	
* * * * *	*		*
Glucose solution	43		
* * * * *	*		*
Glycidyl ester of C10 trialkyl acetic acid, *see* Glycidyl ester of tridecyl acetic acid	34	GLT	
* * * * *	*		*
Glycine, sodium salt solution	7		

TABLE 1.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
* * * * *	*		*
Hydroxy terminated polybutadiene, *see* Polybutadiene, hydroxyl terminated	20		
* * * * *	*		*
Lard	34		
* * * * *	*		*
Lauryl polyglucose (50% or less)	20	LAP	
* * * * *	*		*
Lecithin (*soyabean*)	34	LEC	
* * * * *	*		*
Magnesium hydroxide slurry	5		
* * * * *	*		*
N-Methylglucamine solution (70% or less)	43	MGC	
* * * * *	*		*
Milk	43		
* * * * *	*		*
Naphtha:			
* * * * *	*		*
Aromatic	33		
* * * * *	*		*
Heavy	33		
* * * * *	*		*
Paraffinic	33		
* * * * *	*		*
Octyl phthalate, see Dialkyl(C7–C13)phthalates	34	DAH	
* * * * *	*		*
Oils, edible: Maize	34	VEO/OCO	
* * * * *	*		*
Oil, misc:			
* * * * *	*		*
Gas, high pour	33		
* * * * *	*		*
Gas, low pour	33		
* * * * *	*		*
Gas, low sulfur	33		
* * * * *	*		*
Wood	34		
* * * * *	*		*
Phthalate based polyester polyol	[2] 0	PBE	
* * * * *	*		*
Polyaluminum chloride solution	1		
* * * * *	*		*
Polybutenyl succinimide	10	PBS	
* * * * *	*		*
Potassium polysulfide, Potassium thiosulfide solution (41% or less)	0	PTG	
* * * * *	*		*
Propylene carbonate	34		

TABLE 1.—ALPHABETICAL LIST OF CARGOES—Continued

Chemical name	Group No.	CHRIS code	Related CHRIS codes
* * * * *	*		*
Silica slurry	43		
* * * * *	*		*
Sludge, treated	43		
* * * * *	*		*
Sodium aluminosilicate slurry	34		
* * * * *	*		*
Sodium naphthenate solution, *see* Napthenic acid, sodium salt solution	5		
* * * * *	*		*
Sodium petroleum sulfonate	33	SPS	
* * * * *	*		*
Soyabean oil (epoxidized)	34	OSC/EVO	
* * * * *	*		*
Tetrapropylbenzene, see Alkyl(C9+)benzenes	32	AKB	
* * * * *	*		*
1,3,5-Trioxane	[2]42	TRO	
* * * * *	*		*
Trixylyl phosphate, *see* Trixylenyl phosphate	34	TRP	
* * * * *	*		*
Urea solution	43	URE	
* * * * *	*		*
Water	43		
* * * * *	*		*
Waxes:			
* * * * *	*		*
Candelilla	34	WCD	
* * * * *	*		*
Petroleum	33		
* * * * *	*		*
Zinc alkenyl carboxamide	10	ZAA	
* * * * *	*		*

* * * * *

9. In Table I, in the footnote section, remove the words ''+ denotes newly added products.''.

Table II to Part 150 [Amended]

10. Table II is amended as follows:

a. In Group 0, Unassigned Cargoes, remove the words ''Potassium thiosulfate solution'' and add, in their place, the words ''Potassium polysulfide, Potassium thiosulfide solution (41% or less)''.

b. In Group 0, Unassigned Cargoes, for the entries ''Decyloxytetrahydro-thiophene dioxide'', ''Dodecyl hydroxypropyl sulfide'', ''Lactic acid'', ''Long chain alkaryl sulfonic acid (C16–C60)'' and ''Tall oil fatty acid, barium salt'' add a superscript ''2'' to the entries to read ''Decyloxytetrahydro-thiophene dioxide [2]'', Dodecyl hydroxypropyl sulfide [2]'', ''Lactic acid [2]'', ''Long chain alkarl sulfonic acid (C16–C60)'' and ''Tall oil fatty acid, barium salt [2]'' respectively.

c. In Group 5, Caustics, remove the words ''Cresylic acid tar''.

d. In Group 7, Aliphatic Amines, remove the words ''Calcium long chain phenolic amine (C8–C40)'' and add, in their place, the words ''Calcium long chain alkyl phenolic amine (C8–C40)'', and, remove the words ''Polyolefin amide alkeneamine molybdenum oxysulfide'' and add, in their place, the words ''Polyolefin amide alkeneamine/ Molybdenum oxyxsulfide mixture''.

e. In Group 9, Aromatic Amines, add a superscript ''2'' at the end of the entry ''N-Methyl-2-pyrrolidone'' to read N-Methyl-2-pyrrolidone [2]''.

f. In Group 21, Phonols, Cresols, remove the words ''Long chain alkylphanate/Phenol sulfide'' and add, in their place, the words ''Long chain alkylphenate/phenol sulfide mixture''.

11. In Table II, add the following new entries in the designated Compatibility Groups, in chemically proper alphabetized order:

Table II—Grouping of Cargoes

* * * * *

0. Unassigned cargoes
   Phthalate based polyester polyol [2]
1. Non-oxidizing mineral acids
   Polyaluminum chloride solution

5. Caustics
Sodium naphthenate solution
6. Ammonia
Ammonia, aqueous
7. Aliphatic amines
Diphenylamine, reaction product with 2,2,4-trimethylpentene
20. Alcohols, Glycols
Glycerol monooleate
Hydroxy terminated polybutadiene
Lauryl polyglucose (50% or less)
21. Phenols, Cresols
Cresylic acid tar
31. Paraffins
iso- & cyclo-Alkanes (12+)
33. Miscellaneous Hydrocarbon Mixtures
Oil, misc: Gas, high pour
Sodium petroleum sulfonate
Waxes: Petroleum
34. Esters
Dihexyl phthalate
Ethylene carbonate
Glycidyl ester of C10 trialkyl acetic acid
Lecithin (*soyabean*)
Propylene carbonate
Soyabean oil (epoxidized)
Trixylyl phosphate
41. Ethers
Diethyl ether
1,3,5-Trioxane
43. Miscellaneous Water Solutions
Clay slurry
Potassium thiosulfate solution
N-Methylglucamine solution (70% or less)
Urea solution
Water

* * * * *

Appendix to Part 150 [Amended]

12. In appendix I (a), add the new entry ''iso-Nonyl alcohol (20)'' to follow the entry ''Nonyl alcohol (20)'' in the column ''Compatible with'' for the entry ''Caustic soda, 50% or less'' in the ''Member of reactive group'' column.

13. In appendix I (a), add the following new listings in chemically proper alphabetized order:

* * * * * * *

Member of reactive group	Compatible with
* * * * *	
gamma-Butyrolactone (0).	N-Methyl-2-pyrrolidone (9)
* * * * *	
Sodium dichromate, 70% (0).	Methyl alcohol (20)
* * * * *	
Sodium hydrosulfide solution (5).	iso-Propyl alcohol (20)
* * * * *	

14. In appendix I (b), add the following new entries in chemically proper alphabetized order to read as follows:

* * * * *

Phthalate based polyester polyol (0) is not compatible with Group 2, 3, 5, 7 and 12.

1,3,5-Trioxane (41) is not compatible with Group 1 (Non-oxidizing mineral acids) and Group 4 (Organic acids).

* * * * *

PART 151—BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL CARGOES

15. The authority citation for part 151 continues to read as follows:

Authority: 33 U.S.C. 1903, 46 U.S.C. 3703; 49 CFR 1.46.

16. Section 151.05–2 is revised to read as follows:

§ 151.05–2 Compliance with requirements for tank barges carrying benzene and benzene containing cargoes, or butyl acrylate cargoes.

A tank barge certificated to carry benzene and benzene containing cargoes or butyl acrylate cargoes must comply with the gauging requirement of Table 151.05 of this part by August 15, 1998. Until that date, a tank barge certificated to carry benzene and benzene containing cargoes must meet either the gauging requirement of Table 151.05 or the restricted or closed gauging requirements in effect on September 29, 1994; and a tank barge certificated to carry butyl acrylate cargoes must meet either the gauging requirements of Table 151.05 or comply with the open, restricted, or closed gauging requirements in effect on September 29, 1994.

Table 151.05 [Amended]

17. In Table 151.05, for the entries listed below, in the ''Cargo identification, Name'' column, add a bullet to precede the name, and in the ''Special requirements'' column for the entries listed below add, in numerical order, ''.50–73'', in boldface type:

a. Acetic acid
b. Acetic anhydride
c. Coal tar naphtha solvent
d. Coal tar pitch (molten)
e. Formic acid
f. Phosphoric acid
g. Propionic acid
h. Sodium chlorate solution (50% or less)

PART 153—SHIPS CARRYING BULK LIQUID, LIQUEFIED GAS, OR COMPRESSED GAS HAZARDOUS MATERIALS

18. The authority citation for Part 153 is revised to read as follows:

Authority: 46 U.S.C. 3703; 49 CFR 1.46. Section 153.40 issued under 49 U.S.C. 5103. Sections 153.470 through 153.491, 153.1100 through 153.1132, and 153.1600 through 153.1608 also issued under 33 U.S.C. 1903 (b).

19. Section 153.1003 is added to read as follows:

§ 153.1003 Prohibited carriage in deck tanks.

When Table 1 refers to this section, cargoes may not be carried in deck tanks.

Table 1 to Part 153 [Amended]

20. Table 1 is amended as follows:

a. In the ''Cargo name'' column, remove the ''+'' symbols that precede the chemical name entries.

b. For the entry ''Dinitrotoluene'', in the ''Cargo name'' column and in the ''Cargo containment system'' column, remove the superscript ''5'', and in the ''Special requirements in 46 CFR Part 153'' column for that entry add, in numerical order, ''.1003''.

c. In the ''Cargo name'' column, remove the words ''Isopropylbenzene, *see* Cumene'' and add, in their place, the words ''Isopropylbenzene (Cumene), *see* Propylbenzene (all isomers)''.

d. For the entry ''Metolachlor'', in the ''Pollution category'' column, remove the symbol ''@'', and in the ''Special requirements'' column for that entry, remove the word ''None'' and add, in its place, the number ''.409''.

21. Table 1 is amended further by adding the following new entries in chemically proper alphabetized order:

Table 1—Summary of Minimum Requirements

* * * * *

TABLE 1.—SUMMARY OF MINIMUM REQUIREMENTS

a.	b.	c.	d.	e.	f.	g.	h.	i.	j.
*	*	*	*	*	*	*	*	*	*
Acetochlor	A	P	II	NR	Open	Open	A	.409	NA
*	*	*	*	*	*	*	*	*	*
Alkyl (C7-C12)phenol poly(4-12) ethoxylate.	B	P	III	NR	Open	Open	A	.409, .440, .488 [1], .908 (a), (b).	I–D
*	*	*	*	*	*	*	*	*	*
Ammonium bisulfite solution (70% or less).	D	S	III	4m	PV	Restr	No	.238(e), .933, .1002	NA
*	*	*	*	*	*	*	*	*	*
Bromochlorome- thane.	D	S	III	4m	PV	Restr	No	.236 (a), (b), (d), .526, .933.	NA
*	*	*	*	*	*	*	*	*	*
Dibromo- methane.	C	S/P	II	4m	PV	Restr	No	.236 (a), (b), (d), .408, .525 (a), (c), (d), (e), .526, .933, .1020.	NA
*	*	*	*	*	*	*	*	*	*
3,4- Dichloro- 1-butene.	B	S/P	III	B/3	PV	Closed	A,B.C	.316, .409, .525 (a), (c), (d), (e), .526, .527, .933, .1020.	I–D
*	*	*	*	*	*	*	*	*	*
Icosa (oxypropane-2,3-diyl)s.	B	P	III	NR	Open	Open	A	.409, .440, .908(a)	NA
*	*	*	*	*	*	*	*	*	*
Lauryl polyglucose (50% or less).	[B]	P	III	NR	Open	Open	No	.409, .440, .488, .908 (a), (b).	NA
*	*	*	*	*	*	*	*	*	*
N-(2- Methoxy-1-methyl ethyl)-2-ethyl-6-methyl chloro-acetanilide, *see* Metolachlor									
*	*	*	*	*	*	*	*	*	*
Nitroethane [7]	D	S	III	4m	PV	Restr	[7] A,C	.236(b), .409, .526, .1002 (a), (b), .1003.	I–C
*	*	*	*	*	*	*	*	*	*
Nitro propane (20%), Nitroethane (80%) [7].	D	S	III	4m	PV	Restr	[7] A,C	.236(b), .409, .526, .1002 (a), (b), .1003.	I–C
*	*	*	*	*	*	*	*	*	*
Potassium polysul fide, Potassium thiosulfate solution (41% or less).	[C]	S/P	III	NR	Open	Open	No	.236 (b), (c), .409	NA
*	*	*	*	*	*	*	*	*	*
iso-Propylamine solution (70% or less).	C	S/P	II	B/3	PV	Closed	C,D	.236 (a), (b), (c), (g), .408, .440, .525, .526, .527, .1010.	I–D
*	*	*	*	*	*	*	*	*	*

* * * * *

22. The footnotes to Table 1 to part 153 are amended as follows:

a. Remove the words ''+ denotes newly added products.''.

b. Remove the words in footnote 5 and add, in their place, the word ''Reserved.''.

c. In footnote 7, add the word ''Nitroethane'' to follow the words ''Maleic anhydride''; remove the numbers ''(60%)'' and ''(40%)''; and remove the word ''mixture'' and add, in its place, the word ''mixtures''.

Table 2 to part 153 [Amended]

23. Table 2 is amended as follows:

a. In the ''Cargoes'' column, remove the ''+'' symbols that precede the chemical name entries.

b. Under the entry ''Lignin liquor'', in the ''Cargoes'' column, add the subentry, ''Ammonium lignosulfonate solution'' in chemically proper alphabetized order, and in the ''Pollution Category'' column for the subentry ''Ammonium lignosulfonate solution'', insert the symbol ''III'', and in the ''Pollution Category'' column for the subentries ''Calcium lignosulfonate solution'' and ''Sodium lignosulfonate solution'', remove the symbol ''@''.

24. Table 2 is amended further by adding the following new entries in chemically proper alphabetized order: Table 2—Cargoes Not Regulated Under Subchapters D or O of this Chapter when carried in Bulk on Non-oceangoing Barges.

* * * * *

Cargoes	Pollution category
* * * *	*
Ammonium lignosulfonate solution, *see also* Lignin liquor.	III
* * * *	*
Calcium lignosulfonate solution, *see also* Lignin liquor.	III
* * * *	*
Caramel solutions	III
* * * *	*
Sodium lignosulfonate solution, *see also* Lignin liquor.	III
* * * *	*

25. In the footnotes to Table 2 of part 153 remove the words ''+ denotes newly added products.''

Dated: June 15, 1995.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

Appendix I

Note—The following appendix will not appear in the Code of Federal Regulations.

Summary: The information contained in this appendix is for informational purposes only, and is intended to provide mariners with insight into revisions that may be addressed in future rulemaking actions. It does not change existing regulations.

Provisional Categorization of Liquid Substances, MEPC/Circ.281/Rev.1.

On March 7, 1995, the International Maritime Organization (IMO), London, U.K. published the circular MEPC/Circ.281/Rev.1, Provisional Categorization of Liquid Substances. This circular contains a number of chemical cargo lists. Among the various lists are several specialty lists which are presented below (in modified format) for the information of interested parties.

(a) Annex 6. *Oil-like substances.*

1. Pollution Category C—See 33 CFR 151.49(a).
   Aviation alkylates (C8 paraffins and iso-paraffins b. pt. 95–120 deg. C)
   Cycloheptane
   Cyclohexane
   Cyclopentane
   p-Cymene
   Ethyl cyclohexane
   Heptane (all isomers)
   Heptene (all isomers)
   Hexane (all isomers)
   Hexene (all isomers)
   Isopropylcyclohexane (iso-Propylcyclohexane)
   Methylcyclohexane
   Nonane (all isomers)
   Octane (all isomers)
   Olefin mixtures (C5–C7)
   Pentane (all isomers)
   Pentene (all isomers)
   1-Phenyl-1-xylyl ethane
   iso-Propylcyclohexane (Isopropylcyclohexane)
   Propylene dimer
   Tetrahydronaphthalene
   Toluene
   Xylenes
2. Pollution Category D—See also 33 CFR 151.49(b). Diisopropyl naphthalene

(b) Annex 7. *Substances not shipped in pure form but as components in mixtures.* The IMO has recognized that many mixtures transported in bulk by water contain components that are themselves not shipped in bulk alone, and which are therefor neither identified in the IBC Code nor in the lists of Tripartite Agreements. To facilitate the classification of mixtures, such components are assigned pollution categories and ship types. Those products on which IMO has sufficient information to enable classification are:

Product name	Pollution category	Ship type
Borax	D	NA
Sodium nitrate	III	NA
Sodium nitrite (solid)	B	3
Tolyl Triazole	[C]	[3]
Nalco 5740S Antifoam.	[B]	[3]
Diphenylol propane ..	[B]	[3]
Poly(17+)olefin amine.	C	3

(c) Annex 10. *Lube-Oil additives*

Product name	Pollution category	Ship type
Alkaryl polyether (C9–C20).	B	3
Alkenyl (C11+) amide.	D	NA
Alkyl(C8+)amine, alkenyl (C12+) acid ester mixture.	D	NA
Alkyl dithiothiadiazole (C6–C24).	D	NA
Aryl polyolefin (C11–C50).	D	NA
Calcium alkyl (C9) phenol sulfide, polyolefin phosphorosulfide mixture.	A	2
Calcium long chain alkaryl sulfonate (C11–C50).	D	NA
Calcium long chain alkyl phenate sulfide (C8–C40).	D	NA
Calcium long chain alkyl salicylate (C13+).	C	3
Calcium long chain phenolic amine (C8–C40).	III	NA
Long chain alkaryl polyether (C11–C20).	C	3
Long chain alkaryl sulfonic acid (C16–C60).	D	NA
Long chain alkylphenate/Phenol sulfide mixture.	III	NA
Magnesium long chain alkaryl sulfonate (C11–C50).	D	NA
Magnesium long chain alkyl salicylate (C11+).	C	3
Olefin/Alkyl ester copolymer (molecular weight 2000+).	D	NA
Oleylamine	C	3
Polyalkyl (C12–C20) methacrylate.	C	3
Polyether (molecular weight 2000+).	D	NA
Polyolefin (molecular weight 300+).	III	NA
Polyolefin amide alkeneamine (C28+).	D	NA
Polyolefin amide alkeneamine borate (C28–C250).	D	NA
Polyolefin amide alkeneamine molybdenum oxysulfide mixture.	III	NA
Polyolefin amide alkeneamine polyol.		NA
Polyolefin anhydride	D	NA
Polyolefin ester (C28–C250).	D	NA
Polyolefin phenolic amine (C28–C250).	D	NA
Polyolefin phosphorosulfide—Barium derivative (C28–C250).	C	3
Sulfohydrocarbon (C3–C88).	D	NA
Sulfohydrocarbon, long chain (C18+) alkylamine mixture.	B	3

Product name	Pollution category	Ship type
Zinc alkaryl dithiophosphate (C7–C16).	C	3
Zinc alkyl dithiophosphate (C3–C14).	B	3

Note: Since publication of MEPC/Circ.281/Rev.1, additional lube-oil additives may have been added to the list.

(d) Annex 11. *Hydrocarbon families in the IBC Code: Pollution Category and Ship type.*

Product name	Pollution category	Ship type
Alkanes (C6–C9)	C	3
n-Alkanes (C10+)	III	NA
iso- & cyclo-Alkanes (C10–C11).	D	NA
iso- & cyclo-Alkanes (C12+).	III	NA
Alkyl (C3–C4) benzenes.	A	3
Alkyl (C5–C8) benzenes.	A	2
Alkyl(C9+)benzenes	III	NA
Poly(2+)cyclic aromatics.	A	2

Potential for incompatible stowage between isocyanates and water solutions of chemical cargoes.

The Coast Guard has been apprised of a potential for incompatible stowage of isocyanate cargoes, Group 12, adjacent to water solutions of other cargoes (chemicals). Currently, the stowage of isocyanate cargoes adjacent to a number of groups is prohibited, including cargoes listed in Group 43 (Miscellaneous Water Solutions). However, a ''pure'' chemical cargo may be assigned to a Compatibility Group not considered hazardous when stowed adjacent to isocyanates when in fact it could present a hazardous situation if it has a water content. Therefore, the Coast Guard is bringing to the attention of the shipping industry and other interested parties that due caution should be exercised when stowing isocyanates adjacent to water solutions of other cargoes.

The Coast Guard is appreciative of the assistance it received in bringing this potentially hazardous situation to its attention. The Coast Guard is considering the initiation of a rulemaking to restrict stowage of isocyanate cargoes adjacent to water solutions of other cargoes when the ''pure'' chemical itself would not be so restricted.

3. *Name changes of current entries in the IMO Chemical Codes and Coast Guard regulations that the Coast Guard is planning to propose to the IMO.*

(a) Nonyl phenol poly(4-12)ethoxylate would be renamed Nonyl phenol poly(4+)ethoxylates.

(b) The isomers of butyl alcohol, all of which are now listed separately in the Codes would be included under a new generic entry, ''Butyl alcohols (all isomers)''.

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Thursday
June 29, 1995

Part VI

Postal Service

39 CFR Part 111

Classification Reform; Implementation Standards; Proposed Rule

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This document provides information on the rulemaking process the Postal Service plans to follow to implement pending mail classification reform proposals, and to obtain comments and proposals on current implementation plans.

DATES: Comments on the proposed implementation plans must be received on or before July 31, 1995.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington DC 20260–2419. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in Room 6800 at the above address.

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

SUPPLEMENTARY INFORMATION: On March 24, 1995, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a number of mail classification reform proposals. The PRC designated the filing as Docket No. MC95–1 and proceedings are currently under way before the PRC in accordance with 39 U.S.C. 3624 and the PRC's rules of practice under 39 CFR 3001. A notice of the filing, with a description of the Postal Service's proposals, was published on April 3, 1995, in the **Federal Register** by the PRC. 60 FR 16888–16893.

In its classification reform Request, the Postal Service proposed the reform of four current subclasses of mail: the current regular First-Class Mail and First-Class postal and post cards subclasses would be replaced by Automation and Retail subclasses of First-Class Mail; the current regular rate bulk third-class mail subclass would be replaced by Regular, Automation, and Enhanced Carrier Route subclasses of Standard Mail; and the current regular second-class mail subclass would be replaced by Regular and Publications Service subclasses of a Periodicals class.

These proposals were developed through nearly 4 years of collaborative work by the Postal Service and approximately 100 customers, many of whom are also representatives on the Mailers Technical Advisory Committee (MTAC), a group of mailing industry and trade association representatives who advise the Postal Service on a variety of mailing issues.

One of the areas on which the Postal Service sought advice was the simplification of mailing rules by, among other things, the standardization of basic requirements and preparation methods for the various classes, subclasses and categories of mail. This effort is reflected in the proposed mailing standards set out below.

The Postal Service also is seeking customer involvement in the development of its classification reform implementation plans and in the development of the mailing standards that it will implement if the classification changes pending before the PRC are adopted. To do so, the Postal Service has again sought the assistance of MTAC in establishing a mechanism to identify and advise the Postal Service on implementation issues.

With the participation of MTAC, the Postal Service established four Implementation Advisory Groups (IAGs), each tasked with a specific area of interest related to the classification reform proposals before the PRC—Letters, Flats, Periodicals, and Addressing. Each IAG is composed of responsible Postal Service managers and staff and members of MTAC and other mailers who have specific interest and expertise in the mailing areas being addressed by the IAG.

Each IAG has been asked to identify and advise the Postal Service on significant implementation issues. Each IAG has met at least twice and has provided advice on the Postal Service's planned implementation proposals and has identified other issues to be considered in the implementation rulemaking process. These issues are included in the discussion of the implementation proposals below.

The next steps in the Postal Service's implementation rulemaking process will be to consider the comments and proposals received in response to this advance notice of proposed rulemaking, along with further input from the IAGs, and formulate and publish a second advance notice that will request further comments and proposals on the planned implementation requirements.

The Postal Service expects to publish this second notice prior to the opening of the National Postal Forum in Philadelphia on August 27, 1995. The National Postal Forum is a semiannual gathering of mailing industry representatives and representatives of the Postal Service that is sponsored by the National Postal Forum, Inc. This second notice of the planned implementation requirements also will be provided to Forum attendees and will be the subject of Forum presentations.

Following receipt and review of comments on this second notice, the Postal Service will incorporate its proposed implementation requirements, with any revisions made as a result of the comments, into restructured Domestic Mail Manual (DMM) provisions and publish those proposed DMM provisions as a proposed rule for notice and comment.

Assuming that the second advanced notice of proposed rulemaking is published in late August 1995, with 30 days for comments and a reasonable time period for review of those comments and revision of the DMM provisions, the Postal Service expects that the DMM proposed rule will be published in late October or early November 1995. Further comments will be sought and reviewed on this proposed rule, in anticipation of the completion of the classification reform docket before the PRC.

Pursuant to 39 U.S.C. 3624, the PRC will issue a recommended decision on the Postal Service's Request to the Governors of the Postal Service. This recommended decision is expected in January 1996. Pursuant to 39 U.S.C. 3625, the Governors will issue a final decision on the PRC's recommendations.

The Board of Governors then will set an implementation date. Publication of a notice announcing the Governors' decision and the issuance of final Domestic Mail Classification Schedule and Rate Schedule changes will be made immediately after the Governors act. A final rule adopting implementing DMM regulations will be published either with the notice of the Governors' decision or as soon thereafter as possible.

The remainder of this notice sets forth the implementation provisions that the Postal Service is currently considering for adoption if its classification reform proposals are recommended by the PRC and approved by the Governors. For the reasons noted above, the provisions have not yet been drafted in DMM language.

For ease of review, this information is organized by the classes, subclasses, and rate categories proposed by the Postal Service in its classification reform Request to the PRC. Each heading is followed by one or more statements of the pertinent classification language

proposed by the Postal Service for inclusion or retention in the Domestic Mail Classification Schedule (DMCS). A DMCS section reference is included in parentheses at the end of each statement for identification and reference purposes. (Because these proposed DMCS provisions are under review before the PRC as prescribed by 39 U.S.C. 3623, they are not subject to comment in this rulemaking process.) Where appropriate, following each DMCS statement, and indented under it, are statements of the mailing standards the Postal Service currently plans to implement through DMM changes if the pending classification changes are adopted.

The Postal Service has also included statements of pending issues related to these proposals. It is these planned DMM provisions and pending issues on which the Postal Service is seeking comment. The Postal Service also would like to know whether there are any additional proposals or issues that interested parties believe should be included in these classification reform implementation plans.

Neva R. Watson,

Acting Chief Counsel, Legislative.

I. FIRST-CLASS MAIL

A. GENERAL

- Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as First-Class Mail (210).
- First-Class Mail may not exceed 70 pounds or 108 inches in length and girth combined (231).
- Certain matter must be sent as First-Class Mail (210).
- Postage for First-Class Mail must be paid in accordance with 240 (240).
- First-Class Mail must be deposited at places and times designated by the Postal Service (251).

B. RETAIL SUBCLASS (221)

1. General

- Each piece must weigh 11 ounces or less (221.1).

2. Single-Piece Rate Category

- All mailable matter may be mailed at the single-piece rates (210, 221.2).

3. Presort Rate Category

- Must be prepared in a mailing of at least 500 pieces (221.3a).
- Must be presorted, marked, and presented as prescribed by the Postal Service (221.3b).

—Nonupgradable letters and all flats and parcels must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; all remaining mail must be in mixed ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed ADC trays (letters and flats) or sacks (parcels).

—For flats and nonupgradable letters, all possible 5-digit packages must be prepared before 3-digit packages; same for preparation order for ADC and mixed ADC packages.

—Optional make-up for upgradable letters is full trays to 5-digit (optional), 3-digit, AADC, and mixed AADC (no minimum) sort levels.

—For letters, 1- and 2-foot trays must be used; for flats, flat trays must be used; for parcels, sacks must be used.

- The Postal Service prefers the use of both 1- and 2-foot trays to ensure optimum tray utilization. Industry concerns include the efficiency and cost of a production environment where both sizes are intermingled.
- For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.

—Mailing must be entered at an acceptance point designated by the Postal Service.

—Presort rate applies to all pieces in the mailing.

- Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (221.3c).

—Upgradable letters must be letter-size, automation-compatible physical pieces, with machine-printed nonscript addresses, an OCR read area and a barcode clear zone meeting reflectance requirements, and paper that can accept ink.

—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service. The vendor community has developed several other ideas that could be used to meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.

—A certified process must be used at least once a year to ensure the accuracy of 5-digit ZIP Codes.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, turning the list over to someone else to verify, and use of approved software.

—Standardized address element format must be used. Standardized address element format does not refer to guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

- ''Prestigious'' city names may be used if associated with the correct ZIP Code.
- A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

4. Retail Discounts and Surcharges

a. Postal Card and Postcard Discount

• Matter must be a postal card or postcard (221.4) (232).

• Postal card or postcard must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232.1).

b. Nonstandard-Size Surcharge (221.5)

• If the mailpiece weighs 1 ounce or less and its aspect ratio (length of the mailpiece divided by its height) is less than 1.3 or more than 2.5; or if the mailpiece exceeds any of these dimensions: 11.500 inches long; 6.125 inches wide; or 0.250 inch thick (233).

c. Additional Presort Discount

• Applies to each piece weighing more than 2 ounces (221.6).

C. AUTOMATION SUBCLASS (222)

1. General

• Must be prepared in a mailing of at least 500 pieces (222.1).

• Each piece must weigh 11 ounces or less (222.1).

• Must be presorted, marked, and presented as specified by the Postal Service (222.1).

—All mailings must be presorted and presented in trays as described under the appropriate rate categories.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation provided.

—Mailings must be entered at an acceptance point designated by the Postal Service.

—For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (222.1).

—For letters, the mailing must be 100 percent delivery point barcoded. Production of 100 percent delivery point barcode (DPBC) mailstream requires resolving such issues as preprinted envelopes with less than a DPBC and the coding of destinations assigned a unique 5-digit ZIP Code or ZIP+4. A pure DPBC mailstream is needed to eliminate costly backflow of uncoded or non-DPBC pieces.

—For flats, the mailing must be 100 percent ZIP+4 or delivery point barcoded. For flats, the delivery point barcode will be optional; the ZIP+4 barcode, required. 100 percent barcoding for flats requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or DPBC.

• Must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (222.1).

—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats.

—Coding Accuracy Support System (CASS) certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.

—Certified software used must match addresses to current CRIS file within 90 days of mailing date for letter-size carrier route rate mail. The ''within 90 days of mailing'' standard may require some mailers to update the carrier route codes in their address lists more frequently than every 90 days. This condition is influenced by the mailers' production schedule and when, during that cycle, they would normally update carrier route codes.

—Customer moves must be updated at least every 6 months (permissible methods are expected to include National Change of Address (NCOA) verification, Address Correction Service, and Address Change Service. The vendor community has developed several other ideas that could meet this requirement. The Postal Service anticipates that formal proposals will be offered soon for evaluation.

—Barcoded tray or sack labels must be used. It is proposed that all sack and tray labels be barcoded (as specified in DMM M032), but it is not resolved whether this requirement will be phased in.

—Barcoding must meet the current requirements in DMM C840.

—Courtesy or business reply envelope or card included in an Automation subclass mailing must be automation-compatible and bear a facing identification mark and a correct barcode for the return address. This will be phased in, in the future.

2. Basic Rate Category (Letters) (222.2)

• Must be letter-size mail (222.2).

—Must be presorted to AADC and mixed AADC in trays. A definition will be developed for the sequence of pieces in mixed AADC trays (for example, in 3-digit or AADC groups).

3. Three-Digit Rate Category (Letters) (222.3)

• Must be letter-size mail (222.3).

• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (222.3).

—The Postal Service will allow 3-digit scheme sortation (that is, preparation of combinations of two or more 3-digit areas processed together in Postal Service schemes). Development of a national matrix is to be completed in the near future.

—Minimum of 150 pieces is required per 3-digit destination.

—Overflow trays are allowed when a full tray for the same destination is already prepared.

—A 3-digit make-up is required if sufficient volume.

4. Five-Digit Rate Category (Letters) (222.4)

• Must be letter-size mail (222.4).

• Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (222.4).

—Minimum of 150 pieces is required per 5-digit destination.

—Overflow trays are allowed when a full tray for the same destination is already prepared.

—A 5-digit scheme sort might be developed at a later date.

—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters) (222.5)

• Must be letter-size mail (222.5).

• Must be presorted to carrier routes prescribed by the Postal Service (222.5).

—At least 10 pieces are required per route within 5-digit ZIP Code areas that are manually sorted to walk sequence by letter carrier or are processed on CSBCS equipment to delivery point sequence.

—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort will be allowed; monthly updates are proposed.
—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.
—Preparation in carrier route and 5-digit carrier routes trays is required.
—Carrier route make-up is optional.

6. Basic Flats Rate Category (222.6)

• Must be flat-size mail (222.6).
—Mail must be presorted to ADC and mixed ADC destinations.
—At least 10 pieces per destination must be prepared in packages.
—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

7. 3/5–Digit Flats Rate Category (222.7)

• Must be flat-size mail (222.7).
• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (222.7).
—At least 10 pieces per destination must be prepared in packages.
—Flats trays must be used. For flats, a full tray is defined as one that contains at least a single stack of pieces lying flat that reaches the bottom of the hand-holds, but no more than can be contained in the tray with the cover secured in place. Trays of flats must be secured with two straps.

8. Automation Discounts

a. Postal Card and Postcard Discount

• Must be a postal card or postcard (222.8).
• Must be of uniform thickness and must not exceed any of these dimensions: 6 inches long; 4.250 inches wide; 0.016 inch thick (232).

b. Additional Presort Discount

• Applies to each piece weighing more than 2 ounces (222.9).

I–1 FIRST-CLASS MAIL

[Automation Subclass—Letters]

Sort level	Opt./req.	Rate qualification minimum	Tray levels	Rates letters [1]	Rates cards (cents)
Carrier route [2]	Opt	10 pieces per route	Carrier route (full, no overflow)	23.2	13.7
Carrier route [2]	do	10 pieces per route	5-digit carrier routes (no min.)	23.2	13.7
5-digit	do	150 pieces	5-digit (full, overflow allowed)	23.5	14.0
3-digit	Req	do	3-digit (full, overflow allowed)	25.0	15.5
AADC	do	N/A	AADC (full, overflow allowed)	27.0	17.5
Mixed AADC	do	do	Mixed AADC (no min., grouped by AADC)	27.0	17.5

[1] First-ounce rate. Each additional ounce is 23.0__. Additional presort discount for pieces over 2 ounces 4.6__.
[2] Carrier route sortation and rates limited to nonautomated and CSBCS sorted ZIP Codes

I–2 FIRST-CLASS MAIL

[Automation Subclass—Flats]

Sort level	Optional/required	Package/rate qualification minimums [1]	Tray levels	Rate [2] (cents)
5-digit	Required	10 pieces	5-digit (full, no overflow)	27.0
3-digit	do	do	3-digit (full, no overflow)	27.0
ADC	do	do	ADC (full, no overflow)	29.0
Mixed ADC	do	No min	Mixed ADC (no min.)	29.0

[1] Rate based on package without regard to the tray in which it is placed.
[2] First-ounce rate. An additional nonstandard surcharge of 5¢ applies to each piece weighing 1 ounce or less that falls outside the standard letter dimensions. Each additional ounce is 23.0¢. An additional presort discount of 4.6¢ applies to each piece weighing over 2 ounces.

I–3 FIRST-CLASS MAIL

[Retail Subclass—Presort Letters]

Sort level	Opt./req.	Package minimum	Tray levels	Rate letters (cents) [1]	Rate cards (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	30.0	19.0
3-Digit	do	do	3-Digit (full, no overflow)	30.0	19.0
ADC	do	do	ADC (1/2 full, no overflow)	30.0	19.0
Mixed ADC	do	No min	Mixed ADC (no min.)	30.0	19.0
OPTIONAL MAKE-UP FOR UPGRADABLE PIECES					
5-Digit	Optional	N/A	5-Digit (full, no overflow)	30.0	19.0
3-Digit	Required	do	3-Digit (full, no overflow)	30.0	19.0
AADC	do	do	AADC (full-sequenced by 3-digit ZIP Code, no overflow).	30.0	19.0

I–3 FIRST-CLASS MAIL—Continued

[Retail Subclass—Presort Letters]

Sort level	Opt./req.	Package minimum	Tray levels	Rate letters (cents) [1]	Rate cards (cents)
Mixed AADC	.....do	.....do	Mixed AADC (no min., sequenced by 3-digit ZIP Code).	30.0	19.0

[1] First-ounce rate. Each additional ounce is 23.0¢. Additional presort discount for pieces over 2 ounces 4.6¢.
Single-Piece Rates: No presort, no minimum.

I–4 FIRST-CLASS MAIL

[Retail Subclass—Flats, Parcels Under 11 Oz.]

Presort rate				
Sort level	Optional/required	Package minimum	Tray levels (Sacks for parcels)	Rate [1, 2] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow)	35.0
3-Digit	.....do	.....do	3-Digit (full, no overflow)	35.0
ADC	.....do	.....do	ADC (full, overflow allowed)	35.0
Mixed ADC	.....do	No min	Mixed ADC (no min., sequenced by 3-digit ZIP Code).	35.0

[1] First-ounce rate of 30¢ plus the 5¢ nonstandard surcharge applicable to pieces weighing 1 ounce or less.
[2] Each additional ounce is 23.0¢. An additional presort discount of 4.6¢ applies to each piece weighing over 2 ounces.
Single-Piece Rates: No presort or minimum.

II. STANDARD MAIL

A. GENERAL

- Any matter eligible for mailing (6000) may, at the mailer's option, be mailed as Standard Mail except certain matter required to be sent First-Class Mail or Periodicals class (311).
- May include printed matter not having the character of actual or personal correspondence (312).
- May have certain written additions (313).
- May not exceed 70 pounds (332).
- Postage must be paid in accordance with 340 (340).
- Must be deposited at places and times designated by the Postal Service (351).

B. REGULAR SUBCLASS

1. General

- Each piece must weigh less than 16 ounces (321.31).
- Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.31a).
- Must be presorted, marked, and presented as prescribed by the Postal Service (321.31b).

—Nonupgradable letters, flats, and irregular parcels must be packaged if there are 10 or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; all remaining mail must be in mixed ADC packages. Packages must be placed in 5-digit, 3-digit, ADC, and mixed ADC trays (letters) or sacks (flats and irregular parcels). Current exceptions to packaging of irregular parcels in DMM M306.2a and M306.2b apply.

—Machinable parcels must be sacked to 5-digit destinations (optional if 3/5 rates are not claimed) and destination BMCs when there are 10 or more pounds of mail for a sack destination, with remaining parcels sacked to the origin BMC.

—Palletization of flats is permitted and preferred.

—''Fletters'' (larger letter-size pieces that are barcoded and claimed at the barcoded rates for flats) may receive the option of being prepared in packages on pallets.

—Optional make-up for upgradable letter pieces is full trays to 5-digit (optional), 3-digit, AADC, and mixed AADC (no minimum) sort levels.

—For letters, 1-foot and 2-foot trays must be used; for flats and parcels, sacks must be used. The Postal Service prefers both 1- and 2-foot trays as a means to ensure optimum tray utilization. Industry concerns include the efficiency and cost of a production environment where both sizes are intermingled.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided. Unresolved issues include whether PAVE will be mandatory for those categories where it is available, whether standardized documentation may be used instead, and what time period will be allowed for compliance when PAVE does become available.

—Mailings must be entered at an acceptance point designated by the Postal Service.

- Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.31c).

—Upgradable letters must be letter-size, automation-compatible physical pieces, with machine-printed nonscript addresses, an OCR read area and a barcode clear zone meeting reflectance requirements, and paper that can accept ink.

—A certified process must be used to ensure the accuracy of 5-digit ZIP Codes at least once a year.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify use of approved software.

—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or

ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. The overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

• ''Prestigious'' city names may be used if associated with the correct ZIP Code.

• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category (321.22)

—Must be presorted to ADC or mixed ADC trays (letters) or sacks (flats and irregular parcels).

—Under the optional sortation for upgradable letters, this mail may be presorted to AADC and mixed AADC trays. Machinable parcels are presorted to origin BMC sacks and, if 5-digit sacks are not prepared, presorted to destination BMC sacks.

3. 3/5-Digit Rate Category (321.23)

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations, as prescribed by the Postal Service (321.23).

—Must be presorted to 5-digit and 3-digit trays (letters) or sacks (flats and irregular parcels) and to 5-digit and destination BMC sacks (machinable parcels).

4. Destination Entry Discounts (321.24)

• Applies to mail prepared as prescribed by the Postal Service and entered at the destinating BMC or SCF (321.24).

C. AUTOMATION SUBCLASS (321.3)

1. General

• Each piece must weigh less than 16 ounces (321.3).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).

• Must be presorted, marked, and presented as prescribed by the Postal Service (321.3b).

—Presort must conform to that specified under rate categories.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

—Mailings must be entered at an acceptance point designated by the Postal Service.

—Separately prepared packages of 100 percent barcoded, 5-digit barcoded, nonbarcoded, and carrier route presort flats may be palletized together in identified and segregated groups, and reported together on mailing statements and supporting documentation.

• Must bear a barcode representing no more than 11 digits (not including correction digits) as prescribed by the Postal Service (321.3c).

—For letters, mail must be 100 percent delivery point barcoded.

—For flats, mail must be 100 percent ZIP+4 or delivery point barcoded. The delivery point barcode will be optional, but the ZIP+4 barcode will be required. This standard requires that each piece in a mailing (or segment or other subunit of a job) bear a ZIP+4 or delivery point barcode.

• Must be letter-size or flat-size as defined by the Postal Service and must meet the machinability, addressing, barcoding, and other preparation requirements prescribed by the Postal Service (321.3d and 321.3e).

—The current machinability requirements in DMM C810 must be met for letters, and those in DMM C820 must be met for flats.

—Coding Accuracy Support System (CASS) certified software must be used within 6 months of the mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. (This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.)

—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for letter-size carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly because of the length of their mail production cycles.

—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city, state, and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. This overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

• ''Prestigious'' city names may be used if associated with the correct ZIP Code.

• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (e.g., directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

• Must use barcoded tray or sack labels. For flats, sack and tray labels must be barcoded as specified in DMM M032.

• Barcoding must meet the current requirements in DMM C840.

2. Basic Rate Category (Letters)

• Must be letter-size mail (321.32).

—Mail must be presorted in AADC and mixed AADC trays.

—A definition will be developed for the sequence of pieces in mixed AADC trays (for example, in 3-digit or AADC groups).

3. Three-Digit Rate Category (Letters)

• Must be letter-size mail (321.33).

• Must be presorted to single or multiple 3-digit ZIP Code destinations as prescribed by the Postal Service (321.33).

—The Postal Service will allow 3-digit scheme sortation by customers (that is, preparation of combinations of two or more 3-digit areas that are processed together in Postal Service operating schemes). Development of a national matrix is to be completed in the near future.

—Minimum of 150 pieces is required per 3-digit destination.

—Overflow trays will be allowed when a full tray for the same destination is already prepared.

—A 3-digit make-up is required if sufficient volume.

4. Five-Digit Rate Category (Letters)

• Must be letter-size mail (321.34).

• Must be presorted to single or multiple 5-digit ZIP Code destinations as prescribed by the Postal Service (321.34).

—A minimum of 150 pieces is required per 5-digit destination.

—Overflow trays will be allowed when a full tray for the same destination is already prepared.

—A 5-digit scheme sort may be developed at a later date.

—A 5-digit make-up is optional.

5. Carrier Route Rate Category (Letters)

• Must be letter-size mail (321.35).

• Must be presorted to carrier routes prescribed by the Postal Service (321.35).

—A system is being developed to allow mailers access to the list of ZIP Codes for which carrier route presort is allowed; monthly updates are proposed.

—Must have at least 10 pieces per route within 5-digit ZIP Code areas that are manually sorted to walk sequence or are processed on CSBCS equipment to delivery point sequence.

—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.

—Mail must be prepared in carrier route and 5-digit carrier routes trays.

—A carrier route make-up is optional.

6. Basic Flats Rate Category

• Must be flat-size mail (321.36).

—Mail must be presorted to ADC and mixed ADC destinations. At least 10 pieces per destination must be prepared in packages.

7. 3/5-Digit Flats Rate Category

• Must be flat-size mail (321.37).

• Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as specified by the Postal Service (321.37).

—At least 10 pieces per destination must be prepared in packages.

8. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within the service area of the destination BMC (or ASF), SCF, or DDU. The DDU discount applies only to Carrier Route rate category mail (321.28).

D. ENHANCED CARRIER ROUTE SUBCLASS

1. General

• Each piece must weigh less than 16 ounces (321.3).

• Must be prepared in a mailing of at least 200 addressed pieces or 50 pounds of addressed pieces (321.3a).

• Must be prepared, marked, and presented as prescribed by the Postal Service (321.3b).

—Mailing must be entered at an acceptance point designated by the Postal Service.

• Must be presorted to carrier routes as prescribed by the Postal Service (321.3c).

—Mail must be packaged if there are 10 or more pieces to a carrier route.

—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow enhanced carrier route rates when pieces are prepared for all stops on such routes.

—Packages must be placed in carrier route sacks when 125-piece or 15-pound minimum per carrier route is met; remaining packages must be placed in 5-digit carrier routes sacks. Palletization of flats is preferred.

—The Postal Service will carry forward the current provisions applicable to 125-piece walk-sequence rates and allow the high-density rates when pieces are prepared for all possible deliveries on those routes that have fewer than 125 stops.

—Separately prepared packages of 100 percent barcoded, 5-digit barcoded, nonbarcoded, and carrier route presort flats may be palletized together in identified and segregated groups, and reported together on mailing statements and supporting documentation.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

• Must be sequenced as prescribed by the Postal Service (321.3d).

• Must meet the machinability, addressing, and other preparation requirements prescribed by the Postal Service (321.3e).

—Certified software used must match addresses to current CRIS file within 90 days of the mailing date for carrier route rate mail. Updating carrier route information within 90 days of the mailing date may require some mailers to update carrier route codes monthly due to the lengths of their mail production cycles.

—Standardized address element format must be used. Standardized address element format does not refer to the guidelines in USPS Publication 28, Postal Addressing Standards.

—Specifically, address element standardization means that the city name, state name, and ZIP Code or ZIP+4 are each elements of an address and must appear as the bottom line in the address block, in that order. The delivery address line must appear on the line immediately above the city state and ZIP Code line. For city-style addresses, the order of elements should be street number, predirectional (e.g., N, S, SW), street name, suffix (e.g., ST, AVE, RD), postdirectional (e.g., W, S, NE), and any necessary secondary unit designator (e.g., APT, STE, RM, UNIT) and number. For rural route or

highway contract routes with box numbers in the address, the delivery address must contain the route number and box number in that order. With post office box addresses, the box number must follow the designation ''PO BOX'' or ''POST OFFICE BOX.'' When any delivery address line information exceeds the space allowed, secondary information must be placed on the line above. Such overflow information may not be placed on the line below the delivery address line. Address element standardization also means that the delivery address line elements should appear in the correct order.

—To help further clarify and respond to questions on the use of standardized address block format, the following information is provided:

• ''Prestigious'' city names may be used if associated with the correct ZIP Code.

• A state name may be fully spelled out or abbreviated according to the abbreviations in the USPS City State File.

• A city name must be spelled correctly enough not to create a duplicate within the state.

• Missing elements (directional or suffix) are not required if their omission does not create an ambiguous match.

• Street names must be spelled correctly enough not to create an ambiguous match.

• Abbreviations of words in street names may be used. (For recommended abbreviations, see USPS Publication 28, Postal Addressing Standards.)

2. Basic Rate Category

—Mailings must be in line-of-travel sequence.

—This is not exact walk-sequence arrangement of the mailpieces. For line-of-travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4s are delivered by the carrier. The mailpieces are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4.

—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow enhanced carrier route rates when pieces are prepared for all stops on such routes.

3. High-Density Rate Category

• Applies to mail presented in walk-sequence order and meeting high-density requirements prescribed by the Postal Service (321.43).

—Mail must be at least 125 pieces per carrier route sorted to carrier walk-sequence.

—The Postal Service will examine the number of routes that have fewer than 10 possible deliveries and determine whether to allow carrier route rates when pieces are prepared for all stops on such routes.

—The current methods for walk-sequencing address lists in DMM M304.5 may be used.

—It has been suggested that the Postal Service use line-of-travel sequence as an alternative to exact walk sequence.

4. Saturation Rate Category

• Applies to mail presented in walk-sequence order and meeting the saturation requirements prescribed by the Postal Service (321.44).

—There must be addressed pieces for at least 90 percent of the total active residential deliveries per route, or for at least 75 percent of the total active deliveries per route.

—The current methods for walk-sequencing address lists in DMM M304.5 must be used.

—Further instructions will be developed for the preparation of letter-size pieces in this rate category (for example, use of sacks or trays).

5. Destination Entry Discounts

• Applies to mail prepared as prescribed by the Postal Service and addressed for delivery within the service area of the destination BMC (or ASF), SCF, or DDU (321.45).

—The Postal Service is working to align SCF, ADC, and BMC service area boundaries.

—Destination entry will not be required to mail at high-density or saturation walk-sequence rates.

II–1 STANDARD MAIL

[Automation Subclass—Letters (Third-Class)]

Sort level	Opt./req.	Rate qualification minimum	Tray levels	Rate [1] (cents)
Carrier Route [2]	Opt.	10 pieces per route	Carrier Route (full, no overflow)	14.1
Carrier route [2]	.....do	.....do	5-Digit Carrier Routes (no min.)	14.1
5-Digit	.....do	150 pieces	5-Digit (full, overflow allowed)	15.5
3-Digit	Req.	.....do	3-Digit (full, overflow allowed)	16.8
AADC	.....do	N/A	AADC (full, overflow allowed)	17.5
Mixed AADC	.....do	.....do	Mixed AADC (no min., grouped by AADC)	17.5

[1] Destination discounts will also be available.
[2] Carrier Route sortation and rates limited to nonautomated and CSBCS sorted ZIP Codes.

II–2 STANDARD MAIL

[Automation Subclass—Flats (Third-Class)]

Sort level	Optional/required	Package minimum	Sacks [2]	Rate [1] (cents)
5-Digit	Required	10 pieces	5-Digit (min. 125 pieces or 15 lbs.)	19.0
3-Digit	.....do	.....do	3-Digit (min. 125 pieces or 15 lbs.)	19.0
ADC	.....do	.....do	ADC (min. 125 pieces or 15 lbs.)	23.7
Mixed ADC	.....do	No min	Mixed ADC (no min.)	23.7

[1] Rate is based on type of package regardless of sack in which, or pallet on which, it is placed. Destination discounts will also be available.
[2] Palletization preferred. Pallet destinations are not the same as sack levels shown.

II–3 STANDARD MAIL

[Regular Subclass—Letters (Third-Class)]

Sort level	Opt./req.	Package min.	Tray levels	Rate [1] (cents)
5-Digit	Required	10 pieces	5-Digit (full, no overflow trays)	21.9
3-Digit	do	do	3-Digit (full, no overflow trays)	21.9
ADC	do	do	ADC (½ full, no overflow trays)	26.1
Mixed ADC	do	No min	Mixed ADC (no min.)	26.1
OPTIONAL MAKE-UP FOR UPGRADABLE PIECES [1]				
5-Digit	Optional	N/A	5-Digit (full, no overflow)	21.9
3-Digit	do	do	3-Digit (full, overflow allowed)	21.9
AADC	do	do	AADC (full, sequenced by 3-digit ZIP Code)	26.1
Mixed AADC	do	do	Mixed AADC (no min., sequenced by 3-digit ZIP Code).	26.1

[1] Destination discounts will also be available.

II–4 STANDARD MAIL

[Regular Subclass—Flats and Parcels (Third-Class)]

Presort rate				Minimum piece rate [3, 4] (cents)
Sort level	Optional/required	Package minimum [1]	Sacks [1, 2]	
5-Digit	Required	10 pieces	5-Digit (min. 125 pieces or 15 lbs.)	23.7
3-Digit	do	do	3-Digit (min. 125 pieces or 15 lbs.)	23.7
ADC	do	do	ADC (min. 125 pieces or 15 lbs.)	30.5
Mixed ADC	do	No min	Mixed ADC (no min.)	30.5

[1] No packaging will be required for machinable parcels. Machinable parcels will be sacked to 5-digit and destination BMC whenever there are 10 pounds or more of mail for a sack destination, with remaining parcels sacked to the origin BMC. The 5-digit sacks will be optional for mail claiming basic rates.
[2] Palletization permitted and preferred. Pallet destinations are different from the sack destinations shown.
[3] Rate is based on sack level for sacked mail. For packages on pallets, the rate is based on the package level.
[4] Destination discounts will also be available.

II–5 STANDARD MAIL

[Enhanced Carrier Route Subclass (Third-Class)]

Sort level	Opt./req.	Package Minimum	Sacks [1]	Minimum per-piece rate (cents)
SATURATION				
Carrier route	Required	90% total active residential deliveries or 75% total active all deliveries per route (100% if simplified address).	CR (min. 125 pcs. or 15 lbs.)	13.5
			5D CR–RTS (no min.)	13.5
HIGH DENSITY				
Carrier route	Required	125 pcs. per route	CR (min. 125 pcs. or 15 lbs.)	14.8
			5D CR–RTS (no min.)	14.8
BASIC				
Carrier route	Required	10 pieces per route	CR (min. 125 pcs. or 15 lbs.)	15.5
			5D CR–RTS (no min.)	15.5

[1] Trays preferred for letters. Palletization preferred for flats.
No Residual.

III. PERIODICALS

The classification reform proposal changes the name for second-class mail to Periodicals. Second-class regular rate mail will be split into two subclasses: Publications Service and Regular Periodicals. Preferred second-class mail preparation rules and rates, including those for in-county mail, will not change as a result of the pending classification reform case.

A. GENERAL

1. Basic Requirements

The requirements listed below represent no change to current standards governing eligibility for second-class rates.

- Must qualify as General Publication, Requester Publication, Publication of Institution and Society, or Publication of a State Department of Agriculture (411.1).
- Must be mailable matter consisting of newspapers and other periodical publications (411.2).
- Must be regularly issued at stated intervals at least four times a year, bear a date of issue, and be numbered consecutively (411.3).
- Must have a known office of publication (411.4).
- Must be formed of printed sheets (411.5).
- No size or weight limits (430).
- Postage must be paid in accordance with 441 (441).
- Must be presorted as prescribed by the Postal Service (442).
- Must be identified as prescribed by the Postal Service (444).
- May have certain attachments and enclosures (443).
- Must file certain information (445).
- May contain enclosures and supplements as prescribed by the Postal Service (446).
- Must be deposited at places and times designated by the Postal Service (451).

2. General Publications

These requirements are the same as current standards for second-class mail.

- Must be for the purpose of disseminating information of a public character or must be devoted to literature, the sciences, art, or some special industry (412.2).
- Must have at least 50 percent paid circulation (412.31).
- Must have a legitimate list of subscribers (412.32).
- Must meet tests to ensure that it is not designed primarily for advertising purposes (for example, advertising may not exceed 75 percent in more than one-half of its issues during any 12-month period) (412.4).

3. Requester Publications

These requirements are the same as current standards for second-class mail.

- Must contain at least 24 pages (413.2).
- Must contain at least 25 percent nonadvertising (413.31).
- Must meet ownership and control test for advertising purposes (413.32).
- Must have a legitimate list of requesters, with at least a 50 percent distribution to requesters (413.41).

4. Publications of Institutions and Societies

These requirements are the same as current standards for second-class mail.

- Must meet General Publications advertising requirements (414.1).
- Must contain only publisher advertising unless certain conditions are met (414.1, 414.2).
- Must be published by an institution or society (414.1).

5. Publications of State Departments of Agriculture

These requirements are the same as current standards for second-class mail.

- Must be issued by a state department of agriculture (415).
- Must contain no advertising and must further the objective of the department (415).

6. Foreign Publications

These requirements are the same as current standards for second-class mail.

- Must have same character as domestic Periodicals (416).

B. REGULAR SUBCLASS

1. General Requirements

With the exception of the change in the description of rate categories, and possible presort changes explained below, the requirements for the Regular subclass have not changed from those currently applicable to regular second-class mail.

- Must be presorted, marked, and presented as prescribed by the Postal Service (421.1).

—Mail must meet current requirements in DMM M010, M020, M030, M041, M042, M200, M800, D200.

- Must meet machinability, addressing, and other preparation requirements prescribed by the Postal Service (421.1).

—Mail must meet current requirements in DMM A200, A800, C200, C800.

2. Regular Subclass Pound-Rate Category

These requirements are the same as current standards for second-class mail.

- An unzoned pound rate applies to nonadvertising portion of the publication (421.2).
- A zoned pound rate (rates are based on 9 zones) applies to the advertising portion (421.2).

3. Regular Piece-Rate Categories (421.3)

—Regular piece-rate categories include basic, 3- and 5-digit, and carrier route. These proposed categories eliminate the rate levels A, B, and C, making the presortation structure for Periodicals more consistent with other classes. The new 3- and 5-digit rate category replaces the current B3 and B5 rates. Mail presorted to all 3-digit destinations (not just to unique 3-digit destinations) will qualify for the 3- and 5-digit rate. This represents a change from today's regular second-class rate structure.

—Industry members of the Periodicals Implementation Advisory Group have suggested that the presort requirements for Regular and Publications Service rates be made the same for simplicity. Although the Postal Service did not anticipate making changes, except as noted to the current presort requirements for Regular Periodicals, it agrees that a single presort scheme would make sense and will evaluate the suggestion. Such changes would include eliminating the optional city, SCF, state, and SDC sortation levels. The Publications Service chart at the end of this section contains additional information on the proposed sortation scheme. The Postal Service is interested in the comments from publishers and other parties on whether the sortation requirements for Regular Periodicals should be the same as those for Publications Service.

4. Basic Rate Category (421.31)

a. Three- and Five-Digit Rate Category

- Must be presorted to single or multiple 3- and 5-digit ZIP Code destinations as prescribed by the Postal Service (421.32).

—In nonautomation rate mailings, rates apply to pieces in 5-digit, optional city, and 3-digit packages of six or more addressed pieces each that are correctly sorted to 5-digit, optional city, or 3-digit sacks.

—In packaged-based automation-rate letter-size mailings, rates apply to pieces in 5-digit packages of 10 or more pieces, and in optional city and 3-digit packages of 50 or more pieces, that are placed in 5-digit, optional city, 3-digit, SCF, or AADC trays.

—In barcoded rate flat-size mailings, rates apply to pieces in 5-digit, optional city, and 3-digit packages of six or more addressed pieces that are sorted to 5-digit, optional city, 3-digit, SCF, ADC, or SDC sacks.

b. Carrier Route Rate Category

These requirements are the same as current standards for second-class mail.

• Must be presorted to carrier routes as prescribed by the Postal Service (421.33).

—Mail must be prepared in packages of six or more addressed pieces each.

5. Regular Subclass Discounts (421.4)

a. Barcoded Letter Discounts

These requirements are the same as current standards for second-class mail.

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.41).

• Must meet the machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.41).

b. Barcoded Flats Discounts

These requirements are the same as current standards for second-class mail.

• Must bear a barcode representing not more than 11 digits (not including correction digits) as prescribed by the Postal Service (421.42).

• Must meet flats machinability, addressing, and barcoding specifications and other preparation requirements prescribed by the Postal Service (421.42).

c. High-Density Discount

High density refers to the current 125-piece walk-sequence category.

• Must be presented in walk-sequence order (421.43).

• Must meet high-density and preparation requirements prescribed by the Postal Service (421.43).

d. Saturation Discount

These requirements are the same as current standards for second-class mail.

• Must be presented in walk-sequence order (421.44).

• Must meet the saturation and preparation requirements prescribed by the Postal Service (421.44).

e. Destination Entry Discounts

These requirements are the same as current standards for second-class mail.

• Must be entered at the destinating SCF or DDU (421.45).

• DDU discount applies only to Carrier Route mail (421.45).

f. Nonadvertising Discount

These requirements are the same as current standards for second-class mail.

• A discount applies, based on the proportion of nonadvertising content (421.46).

C. PUBLICATIONS SERVICE SUBCLASS

1. General Requirements

There are three primary criteria that must be met in order to mail under Publications Service (each is further explained in this section):

(1) At least 75 percent of the mailed volume must be paid (for General Publications) or requested (for Requester circulation);

(2) At least 30 percent of the content in each issue must be nonadvertising matter; and

(3) At least 90 percent of each issue must be presorted to carrier-route, 5-digit, or 3-digit destinations.

The requirements that periodicals must meet to be eligible to mail at Publications Service rates are based on the entire mailed volume of the publication. These standards are based on mailed volume, rather than the entire circulated volume of the publication (that is, the volume that must be accounted for when a publication is audited for eligibility as Periodicals mail).

This change responds to publishers' requests that the Postal Service concern itself with only the mailed portion of a publication's circulation. Mailed volume for the purposes of these proposals includes all mailed copies (including mailed newsstand copies) except for those claimed at in-county, foreign, or First-Class, Priority Mail, or Express Mail rates.

2. 75 Percent Paid or Requester Circulation

• At least 75 percent of the mailed volume must be paid or requested (422.1).

—This differs from current second-class requirements in two ways: it is an increase in the paid/requested requirement from 50 percent to 75 percent and it is applied against the mailed volume, not total circulation.

—Failure to meet this requirement will result in revocation of Publications Service eligibility.

3. 30 Percent Nonadvertising Content

• Must have at least 30 percent nonadvertising content in each issue (mailed volume except within county rate volume) (422.1).

—The 30 percent nonadvertising criterion applies to all mailed copies in the mailed volume (this does not include copies mailed at the in-county, foreign, First-Class, Priority Mail, or Express Mail rates.

—Failure to meet the 30 percent nonadvertising requirement will result in a 40 percent postage penalty assessment on the noncomplying issue.

4. 90 Percent Presorted to 3–Digit or Finer

• Must have at least 90 percent of each issue presorted to 3-digit or 5-digit destinations or to carrier routes (mailed volume except within county rate volume) (422.1).

—Copies count toward the 90 percent density criterion if they are part of a minimum of 24 pieces to a 3-digit destination all of which are properly presorted in packages of six pieces or more to carrier-route, 5-digit, or 3-digit destinations, as appropriate.

—Failure to meet the 90 percent presortation requirement will result in a 40 percent postage penalty assessment on the noncomplying issue.

• Must be presorted, marked, and presented as prescribed by the Postal Service (422.1).

—Barcoded letter mail must be prepared in trays.

—Flats must be packaged if there are six or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; remaining mail prepared in mixed ADC packages. Packages may be placed on pallets or in 5-digit, 3-digit, ADC, and mixed ADC sacks. Flats may be optionally packaged to carrier route when there are six or more pieces per carrier route. Carrier route packages may be placed on pallets or in carrier route sacks or in 5-digit carrier routes sacks.

EXAMPLE OF 90 PERCENT CRITERION

Sort Levels	Publications 90% Criterion ZIP Codes						
	102	202	302	402	502	602	Total
Carrier Route	6	0	18	12	6	124	166
5-Digit	6	6	34	40	56	124	266
3-Digit	18	17	28	2	8	75	148
Total	30	23	80	54	70	323	580
Quantity Toward 90%	30	0	80	52	70	323	555
							95.69

The 23 pieces to ZIP Code 202 do not count toward the 90 percent requirement because there are fewer than 24 pieces to the 3-digit destination.

Two of the pieces to ZIP Code 402 do not count because they are not part of a package of six or more pieces. Because carrier route is an optional sortation level, the customer may choose to move four pieces from the carrier route qualifying portion to the 3-digit level to meet the six-piece minimum (this assumes that the finest level of sort for those four pieces is a 3-digit destination and not part of the 5-digit).

Although firm packages will continue to be considered a single addressed piece for presort and postage purposes, all copies in firm packages of six or more and all copies in firm packages of fewer than six that are included in packages of six or more will count toward meeting the 90 percent presortation requirement.

For the purposes of the 90 percent criterion, an issue is considered to consist of all copies in the mailed volume that are mailed with that window of time during which the main file and most supplemental mailings for a particular title are deposited with the Postal Service. The mailing ''window'' includes all copies, regardless of cover date, that are mailed between cover dates.

For example, the first copy of the January cover date of *XYZ Monthly* mails on January 1 and the first copy of the February cover date mails on February 1. During January, the issue might include the full main file of the January cover date, at least one supplemental run of the January cover date, at least one supplemental run of the December cover date, and possibly even a supplemental run of the November cover date. The following example shows how this determination is to be made:

Activity	Total pieces	Qualifying pieces	Qualifying percent
January main file	250,000	240,000	96
January supplement [1]	42,000	38,000	90
Do	15,000	14,000	93
January supplement	2,000	800	40
December supplement [1]	23,000	18,000	78
Do	9,000	8,000	89
December supplement	150	0	0
November supplement	1,300	800	62
Do	200	0	0
	342,650	319,600	93

[1] Comailing

In a comailing situation—for purposes of administering the 90 percent criterion — the Postal Service proposes to look at what happened to the individual title within the comailing. In other words, the qualifying pieces in the comailing are added to the qualifying pieces in the main file and any qualifying pieces in supplemental runs that were not comailed, and the final qualifying percentage is derived by dividing the total number of qualifying pieces by the total number of mailed pieces. Each individual PS Form 3541 will not have to meet the 90 percent criterion.

Publications Service titles may be comailed with Regular Periodicals. If a decision is made not to align the presort requirements in Regular Periodicals with that of Publications Service, if Publications Service and Regular Periodicals are comailed, the entire comailing is to be prepared using the Publications Service sortation criteria.

In a comailing, penalties apply to the publication that fails to meet the requirements, not to the publications with which it is comailed.

- Must be presorted, marked, and presented as prescribed by the Postal Service (422.1).

—Barcoded letter mail must be prepared in trays.

—Flats must be packaged if there are six or more pieces to a 5-digit area, to a 3-digit area, or to an ADC; remaining mail prepared in mixed ADC packages. Packages may be placed on pallets or in 5-digit, 3-digit, ADC, and mixed ADC sacks. Flats may be optionally packaged to carrier route when there are six or more pieces per carrier route. Carrier route packages may be placed on pallets or in carrier route sacks or in 5-digit carrier routes sacks.

—Barcoded container labels must be used (tray and sack labels that are either postal-provided or mailer-provided).

—Deposit times must be scheduled.

—Presort Accuracy Verification and Evaluation (PAVE) software must be used or standardized documentation must be provided.

—Mailings must be entered at an acceptance point designated by Postal Service. This requirement is the same as current standards for second-class mail.

• Must meet the machinability, addressing, barcoding, postage payment, containerization, and other preparation requirements prescribed by the Postal Service (422.1).

—For nonautomation compatible, non-carrier route rate mail, must use a certified process to verify the accuracy of mailing lists against USPS 5-digit ZIP Code file at least once a year.

—A recommended checklist of possible ZIP Code verification options for address lists that are not computerized could be signed as a part of the verification process. Items to appear on the checklist might include manual verification using the most recent ZIP Code directory, a survey of the addressees currently in the address list to inquire about changes to ZIP Code information, participation in the current manual list correction service, and turning the list over to someone else to verify, and use of approved software.

—For automation-compatible pieces other than carrier route rate flats, Coding Accuracy Support System (CASS) certified software must be used within 6 months of mailing date or Multiline Accuracy Support System (MASS) certified equipment must be used to apply the barcode. This simply changes the current requirement for use of such software from within 1 year of mailing to within 6 months of mailing.

—Must match addresses to current CRIS file using certified software within 90 days of mailing for carrier route rate mail.

—Standardized address element format must be used. The standard address element format refers to the positioning of elements within the address block, not to address placement on the piece itself. This requirement will apply to nonbarcoded pieces only, however, the Postal Service strongly recommends that all mailpieces contain an address that meets these standards.

—Address Change Service (ACS) must be used.

—Computer-based electronic payment systems must be used when those systems are developed. Electronic payment systems will not be required in the final rule, but they will be strongly recommended.

—New containerization requirements will be developed with mailers. For the purposes of this rulemaking, although sacks may be used, palletized sacks or packages (palletized trays for letter mail) will be the preferred containerization method.

• Must bear a barcode representing not more than 11 digits (not including correction digits) on automation-compatible pieces other than carrier-route rate flats as prescribed by the Postal Service (422.1).

—If a mailpiece meets all machinable requirements, every piece (other than the carrier route flat qualifying portion) must be barcoded. All pieces must bear at least a 5-digit barcode and no less than 85 percent of the pieces must bear a 9-digit or delivery point barcode. If a piece is not machineable, barcoding is not required.

—Barcodes are defined by the current requirements in DMM C840.

—Automation compatibility is defined by the current requirements in DMM C810 for letters and in DMM C820 for flats.

—Must use a certified system or software to determine and document advertising and editorial percentages in each edition/issue when available.

—The Postal Service does not plan to require a certified system to audit advertising/nonadvertising percentages in these implementation rules. When such systems are developed in the future, and the Postal Service has reason to believe that they will be, the Postal Service expects to propose their use in a future rulemaking.

• Must have a legitimate list of subscribers or requesters (422.1). (This requirement is the same as the current standard for second-class mail.)

• Must be audited by a certified public accountant or a national circulation audit service as prescribed by the Postal Service (422.1).

• Must be authorized to mail at Publications Service rates, and, if so authorized, may mail only at Publications Service and Within County rates (483).

—There will be an application process for authorization to mail in Publications Service with a proposed $305 application fee. The application process has yet to be developed; however, it is expected to be similar to the current second-class procedures. A publisher will first have to show that the basic requirements for entry into Periodicals are met (such as frequency of issue). Then, compliance with the additional Publications Service criteria must be shown.

• If a Publications Service authorization is withdrawn or revoked, a new authorization is not issued for 1 year (483).

5. Publications Service Pound-Rate Category

• A zoned pound rate applies to the entire publication (422.3). (This differs from current second-class standards in which only the advertising content of the publication is zone rated.)

• Rates apply to five zones. (This differs from current second-class and Regular Periodicals, which have 9 zones.)

6. Publications Service Piece-Rate Categories (422.4)

7. Basic Rate Category (422.41)

8. Carrier Route Rate Category

• Applies to mail prepared and presorted to carrier routes as prescribed by the Postal Service (422.42).

—Carrier route mail must be prepared in line-of-travel sequence.

—This is not exact walk-sequence arrangement of the mailpieces. For line-of travel sequence, the mailpieces are first sorted into the sequence in which the ZIP+4s are delivered by the carrier. The mailpieces are further sorted into ascending or descending numerical sequence within the number range associated with the ZIP+4.

9. Destination Entry Discounts

• Applies to mail entered at the destination SCF or DDU (422.5).

• DDU discount only applies to Carrier Route mail (422.5).

III–1 PUBLICATIONS SERVICE SUBCLASS—LETTERS

Sort level	Opt./req.	Package minimum	Tray levels	Rate
CR	Opt.	10 pieces per route	CR (full, no overflow)	Pub. Svc. CR
CR	do	do	5D CR–RT (no min.)	Do.
5–Digit	do	N/A	5–Digit (full, overflow allowed)	Pub. Svc.
3–Digit	Req.	do	3–Digit (full overflow allowed)	Do.

III–1 PUBLICATIONS SERVICE SUBCLASS—LETTERS—Continued

Sort level	Opt./req.	Package minimum	Tray levels	Rate
AADC	.....do	.....do	AADC (full, overflow allowed)	Do.
Mixed AADC	.....do	No minimum AADC sequence (with separations).	Mixed AADC (no min.)	Do.

III–2 PUBLICATIONS SERVICE SUBCLASS—FLATS

Sort level	Opt./Req.	Package minimum	Sacks	Rate
Firm	Opt.	2 copies		Pub. Svc. or Pub. Svc. CR (depending on further packaging & sacking)
Carrier route	.....do	6 pieces per route	Carrier route (min., one 6-pc. pkg., required if 24 or more pieces).	Pub. Svc. CR
		.....do	5–Digit carrier routes (no min.)	Do.
5–Digit	Req.	6 pieces	5–Digit (min., one 6-pc. pkg., required if 24 or more pieces).	Pub. Svc.
3–Digit	.....do	.....do	3–Digit (min., one 6-pc. pkg., required if 24 or more pieces).	Do.
ADC	.....do	6 pieces (fewer permitted).	ADC (min., one 6-pc. pkg., required if 24 or more pieces).	Do.
Mixed ADC	.....do	No minimum	Mixed ADC (no min.)	Do.

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Federal Register

Thursday
June 29, 1995

Part VII

Department of Labor

Office of Labor-Management Programs

29 CFR Part 215

Federal Transit Law Guidelines; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Programs

29 CFR Part 215

RIN 1294–AA14

Guidelines, Section 5333(b), Federal Transit Law

AGENCY: Office of Labor-Management Programs, Office of the American Workplace, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the American Workplace proposes to revise the guidelines concerning its procedures for administering Section 5333(b) of the Federal Transit law, commonly known as Section 13(c). These revised guidelines will replace the existing guidelines in their entirety. Section 5333(b) requires that certain protective arrangements for employees be in place as a condition of Federal financial assistance for transit projects. The proposed changes will allow the agency to certify that the requisite protections are in place in a more expeditious manner and will make the certification process more predictable for the parties involved.

DATES: Interested parties may submit written comments on this proposal by July 31, 1995.

ADDRESSES: Written comments should be submitted to Office of the American Workplace, U.S. Department of Labor, Room S–2203, 200 Constitution Avenue NW., Washington, DC 20210; phone number (202) 219–6045.

FOR FURTHER INFORMATION CONTACT: Charles L. Smith, Deputy Assistant Secretary, Office of the American Workplace, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2203, Washington, DC 20210, (202) 219–6045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Section 5333(b) of the Federal Transit law, 49 U.S.C. § 5333(b), requires that arrangements be made to protect certain rights of mass transit employees affected by grants of Federal funds for the acquisition, improvement, or operation of a transit system. These rights include the preservation of rights and benefits under existing collective bargaining agreements, the continuation of collective bargaining rights, the protection of individual employees against a worsening of their positions related to employment, assurances of employment to employees of acquired mass transportation systems, priority of reemployment, and paid training or retraining. The current guidelines were introduced in March, 1978. In administering this program, the Department of Labor notifies relevant unions, if any, in the area of the proposed project and provides the grant applicant and the affected union(s) an opportunity to develop the terms and conditions of the protections. The Department provides technical and mediation assistance to the parties during the negotiations.

In the main, these guidelines have functioned effectively—the vast majority of grant applications are processed and the related employee protective arrangements certified within a short time. However, a small percentage of grants require prolonged negotiations to develop appropriate protective arrangements.

The Federal Transit law envisions the innovative, cost-effective use of Federal funds while assuring that the rights of affected employees are protected. In order to better achieve this goal, revised guidelines have been developed to standardize the certification process, thereby insuring certification of protective arrangements in a prompt manner after an application has been submitted.

Administrative Notices

A. Executive Order 12866

These guidelines have been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

B. Regulatory Flexibility Act

The Agency Head has certified that these guidelines are not expected to have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

C. Paperwork Reduction Act

These guidelines contain no information collection requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 29 CFR Part 215

Grant administration; Grants—transportation; Labor-management relations; Labor unions; Mass transportation.

Signed at Washington, DC this 23d day of June, 1995.

Charles L. Smith,

Deputy Assistant Secretary, Office of the American Workplace.

For the reasons set out in the preamble, 29 CFR Chapter II is proposed to be amended by revising Part 215 to read as follows:

PART 215—GUIDELINES, SECTION 5333(b), FEDERAL TRANSIT LAW

Sec.

Authority: Secretary's Order No. 2–93, 58 FR 42578, August 10, 1993.

§ 215.1 Purpose.

(a) The purpose of these guidelines is to provide information concerning the Department of Labor's administrative procedures in processing applications for assistance under the Federal Transit law, as codified at 49 U.S.C. chapter 53.

(b) Section 5333(b) of title 49 of the United States Code reads as follows:

Employee protective arrangements.—(1) As a condition of financial assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) of this title, the interests of employees affected by the assistance shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. The agreement granting the assistance under sections 5307–5312, 5318(d), 5323(a)(1), (b), (d), and (e), 5328, 5337, and 5338(j)(5) shall specify the arrangements.

(2) Arrangements under this subsection shall include provisions that may be necessary for—

(A) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective bargaining agreements or otherwise;

(B) the continuation of collective bargaining rights;

(C) the protection of individual employees against a worsening of their positions related to employment;

(D) assurances of employment to employees of acquired mass transportation systems;

(E) assurances of priority of reemployment of employees whose employment is ended or who are laid off; and

(F) paid training or retraining programs.

(3) Arrangements under this subsection shall provide benefits at least equal to benefits established under section 11347 of this title.

§ 215.2 General.

Upon receipt of copies of applications for Federal assistance subject to 49 U.S.C. 5333(b), together with a request for the certification of employee protective arrangements from the Department of Transportation, the Department of Labor will process those applications, which may be in either preliminary or final form. The application will describe the proposed

project in a manner which allows an adequate assessment of its impact, identify the labor organizations, if any, representing employees of mass transit providers in the area of the proposed project and describe what steps, if any, have been taken to develop the required employee protections.

§ 215.3 Employees represented by a labor organization.

(a)(1) If affected employees are represented by a labor organization, it is expected that where appropriate, protective arrangements shall be the product of negotiation, pursuant to these guidelines.

(2) In instances where states or political subdivisions are subject to legal restrictions on bargaining with employee organizations, the Department of Labor will utilize special procedures to satisfy the Federal statute in a manner which does not contravene state or local law. For example, employee protective terms and conditions, acceptable to both employee and applicant representatives, may be incorporated into a resolution adopted by the involved local government.

(b) Upon receipt of an application involving affected employees represented by a labor organization, the Department of Labor will refer a copy of the application to that organization and notify the applicant of referral.

(1) If an application involves only a capital grant for routine replacement of equipment of like kind and character and/or facilities of like kind and character, the procedural requirements set forth in paragraphs 215.3(b)(2) through 215.3(h) of these guidelines will not apply absent a potentially material effect on employees. Where no such effect is found, the Department of Labor will certify the application based on the terms and conditions as referenced in paragraphs 215.3(b)(2) and 215.3(b)(3)(ii) and (iii).

(2) For applicants with previously certified arrangements, the referral will be based on those terms and conditions.

(3) For new applicants and applicants for which previously certified arrangements are not appropriate to the current project, the referral will be based on appropriate terms and conditions specified by the Department of Labor, as follows:

(i) for operating grants, the terms and conditions will be based on arrangements similar to those of the Model Agreement (referred to also as the National Agreement);

(ii) for capital grants other than those for replacement equipment or facilities referenced in paragraph (b)(1) of this section, the terms and conditions will be no less protective than those of the Special Warranty applied pursuant to section 5311; and

(iii) for grants under section 5311, the Special Warranty.

(c) Following referral and notification under paragraph (b) of this section, and subject to the exceptions defined in § 215.5, parties will be expected to engage in good faith efforts to reach mutually acceptable protective arrangements through negotiation within the time frames designated under paragraphs (d) and (e) of this section.

(d) As part of the Department of Labor's review of an application, a time schedule for case processing will be established by the Department of Labor and specified in its referral and notification letters under § 215.3(b) or subsequent written communications to the parties.

(1) Parties will be given fifteen (15) days from the date of the referral and notification letters to submit objections, if any, to the referred terms. The parties are encouraged to engage in negotiations during this period with the aim of arriving at a mutually agreeable solution to objections any party has to the terms and conditions of the referral.

(2) Within ten (10) days of its receipt of objections, the Department of Labor will:

(i) determine whether the objections raised are sufficient; and

(ii) take one of the two steps described in paragraphs (d)(5) and (6) of this section, as appropriate.

(3) The Department of Labor will consider an objection to be sufficient when:

(i) the objection raises material issues that may require alternative employee protections under 49 U.S.C. 5333(b); or

(ii) the objection concerns changes in legal or factual circumstances that materially affect the rights or interests of employees.

(4) The Department of Labor will consult with the Federal Transit Administrator for technical advice as to the validity of objections.

(5) If the Department of Labor determines that there are no sufficient objections, the Department will issue its certification to the Federal Transit Administrator.

(6) If the Department of Labor determines that an objection is sufficient, the Department, as appropriate, will direct the parties to commence or continue negotiations, limited to issues that the Department deems appropriate and limited to a period not to exceed thirty (30) days. The parties will be expected to negotiate expeditiously and in good faith. The Department of Labor may provide mediation assistance during this period where appropriate. The parties may agree to waive any negotiations if the Department, after reviewing the objections, develops new terms and conditions acceptable to the parties. At the end of the designated negotiation period, if all issues have not been resolved, each party must submit to the Department its final proposal and a statement describing the issues still in dispute.

(7) The Department will issue a certification to the Federal Transit Administrator within five (5) days after the end of the negotiation period designated under paragraph (d)(6) of this section. The certification will be based on terms and conditions agreed to by the parties that the Department concludes meet the requirements of 49 U.S.C. 5333(b). To the extent that no agreement has been reached, the certification will be based on terms and conditions determined by the Department which are no less protective than the terms and conditions included in the referral pursuant to paragraphs 215.3(b)(2) and 215.3(b)(3).

(8) Notwithstanding that a certification has been issued to the Federal Transit Administrator pursuant to paragraph (d)(7) of this section, no action may be taken which would result in irreparable harm to employees if such action concerns matters subject to the steps set forth in paragraph (e) of this section.

(e) If the certification referred to in paragraph (d)(7) of this section is not based on full mutual agreement of the parties, the Department of Labor will take the following steps to resolve outstanding differences:

(1) The Department will set a schedule that provides for final resolution of the disputed issue(s) within sixty (60) days of the certification referred to in paragraph (d)(7) of this section.

(2) Within ten (10) days of the issuance of the certification referred to in paragraph (d)(7) of this section, and after reviewing the parties' descriptions of the disputed issues, the Department will define the issues still in dispute and set a schedule for final resolution of all such issues.

(3) The Department may establish a briefing schedule, usually allowing no more than twenty (20) days for opening briefs and no more than ten (10) days for reply briefs, when the Department deems reply briefs to be beneficial. In either event, the Secretary will issue a final certification to the Federal Transit Administrator no later than thirty (30) days after the last briefs are due.

(4) The Department of Labor will decide the manner in which the dispute will be resolved. In making this decision, the Department may consider the form(s) of dispute resolution employed by the parties in their previous dealings as well as various forms of third party dispute resolution that may be appropriate. Any dispute resolution proceedings will normally be expected to commence within thirty (30) days of the certification referred to in paragraph (d)(7) of this section, and the Secretary will render a final determination, including the bases therefor, within thirty (30) days of the commencement of the proceedings.

(5) The Department will make available final decisions it renders on disputed issues.

(f) Nothing in these guidelines restricts the parties from continuing to negotiate over final terms and conditions and seeking a final certification of an agreement that meets the requirements of the Act prior to the issuance of a final determination by the Secretary.

(g) If, subsequent to the issuance of the certification referred to in paragraph (d)(7) of this section, the parties reach an agreement on one or more disputed issues that meets the requirements of the Act, and/or the Department of Labor issues a final decision containing revised terms and conditions, the Department will take appropriate steps to substitute the new terms and conditions for those previously certified to the Federal Transit Administrator.

(h) Notwithstanding the foregoing, the Department retains the right to refuse to issue a certification where circumstances so warrant.

§ 215.4 Employees not represented by a labor organization.

(a) The certification made by the Department of Labor will afford the same level of protection to those employees who are not represented by labor organizations.

(b) If there is no labor organization representing employees, the Department of Labor will set forth the protective terms and conditions in the letter of certification in accordance with § 215.3(b)(2) and 215.3(b)(3).

§ 215.5 Processing of amendatory applications.

When an application is supplemental to or revises or amends in immaterial respects an application for which the Department of Labor has already certified that fair and equitable arrangements have been made to protect the interests of mass transit employees affected by the subject project the Department of Labor will on its own initiative apply to the supplemental or other amendatory application the same terms and conditions as were certified for the subject project as originally constituted. The Department of Labor's processing of these applications will be expedited.

§ 215.6 The Model Agreement.

The Model (or National) Agreement mentioned in paragraph (b)(3)(i) of section 215.3 refers to the agreement executed on July 23, 1975 by representatives of the American Public Transit Association and the Amalgamated Transit Union and Transport Workers Union of America and on July 31, 1975 by representatives of the Railway Labor Executives' Association, Brotherhood of Locomotive Engineers, Brotherhood of Railway and Airline Clerks and International Association of Machinists and Aerospace Workers. The agreement is intended to serve as a ready-made employee protective arrangement for adoption by local parties in specific operating assistance project situations. The Department has determined that this agreement provides fair and equitable arrangements to protect the interests of employees in general purpose operating assistance project situations and meets the requirements of 49 U.S.C. 5333(b).

§ 215.7 Department of Labor contact.

Questions concerning the subject matter covered by this part should be addressed to Statutory Programs, Office of the American Workplace, U.S. Department of Labor, suite N5411, 200 Constitution Avenue NW., Washington, DC 20210; phone number 202–219–4473. (Secretary's Order 2–93, 58 FR 42578, August 10, 1993.)

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Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 34

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. 27686, Amdt. No. 34–1]

RIN 2120–AE55

Correction to References in the Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document amends a specific reference in a regulation to provide that the preproduction certification compliance program described in Appendix 6 to International Civil Aviation Organization Annex 16 is an acceptable means of compliance with gaseous emission standards. This document also amends specific references to add the effective date of Volume II of Annex 16. This rule is intended to ensure that the regulations accurately reflect what was intended by the originally proposed rule.

EFFECTIVE DATE: July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McQueen, Research and Engineering Branch (AEE–110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, DC 20591, telephone (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Background

Section 232 of the Clean Air Act Amendments of 1970, (42 U.S.C. 7401 *et seq.*), requires the Federal Aviation Administration (FAA) to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act. Those emission standards are prescribed in 40 CFR part 87. The FAA issued Special Federal Aviation Regulation (SFAR) Number 27 (38 FR 35427, December 28, 1973) to ensure compliance with the aircraft and aircraft engine emission standards and test procedures issued by the EPA in 40 CFR part 87.

In 1989, the FAA proposed to codify SFAR 27 as 14 CFR part 34 (53 FR 18530, May 23, 1988). The NPRM included proposed § 34.71, which stated that compliance with gaseous emission standards would be shown by comparing the pollutant levels with the applicable emission standards. Proposed § 34.71 also stated that an acceptable means of compliance would be incorporated by reference in proposed § 34.4. Proposed § 34.4 referenced the preproduction program described in Appendix 6 to International Civil Aviation Organization (ICAO) Annex 16, ''Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982,'' as an acceptable means of compliance with § 34.71.

In August of 1990, the proposal was adopted as part 34, ''Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes,'' effective September 10, 1990 (55 FR 32856, August 10, 1990). Part 34 contains all of the applicable aircraft engine fuel venting and exhaust emission requirements of SFAR 27, and the test procedures specified under the regulations implementing the Clean Air Act. § 34.4 was not adopted as proposed, but was ''reserved.'' The FAA had intended to, instead, specifically incorporate in Section 34.71 the reference to Appendix 6 of ICAO Annex 16; however, the reference to an acceptable means of compliance was inadvertently omitted. In addition, the final rule did not state the effective date of Volume II of ICAO Annex 16 in several other sections where this cite was referenced.

After part 34 was adopted, the FAA received several requests for clarification of the compliance standards stated in § 34.71; the FAA also received inquiries asking why Appendix 6 to Volume II of ICAO Annex 16 was omitted as an acceptable alternative to testing every engine. Members of the public stated that §§ 34.4 and 34.71 were different from those proposed in the NPRM. The FAA recognizes that the final rule, as adopted, caused the confusion. In responding to the inquiries, the FAA has stated that the intent of the 1989 proposal was to accept Appendix 6 as an alternative means of compliance. Accordingly, the FAA has determined that § 34.71 should be amended to reflect the intent of the proposal.

Discussion of Comments

On April 13, 1994, the FAA published an NPRM (59 FR 17640) to revise § 34.71 or part 34. This proposal stated that Appendix 6 to ICAO Annex 16, ''Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982,'' is an acceptable means of compliance with that section. In addition, it was proposed that §§ 34.64, 34.82, and 34.89 of part 34 would be revised to state that the effective date of Volume II of Annex 16 is February 18, 1982. No comments were received in the docket after a 60-day comment period.

Regulatory Evaluation Summary

This regulatory evaluation examines the potential costs and benefits of the proposed rule to amend part 34. Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. With respect to this rule, the FAA has determined that it: (1) is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of entities; and (4) will not constitute a barrier to international trade. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule which is presented in the following paragraph.

There are no known costs associated with this final rule. The purpose of this rule is to correct an inadvertent omission from § 34.71. In that regulation, the FAA intended to but did not fully incorporate by reference Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982, in that regulation. Appendix 6 describes an acceptable alternative to testing every engine for compliance with gaseous emission standard. The benefit of this rule is that it will eliminate the confusion surrounding the omission of the reference, and it will clarify the intent of the regulation in part 34. This revision to part 34 will also eliminate the need for the public to call the FAA to find out whether Appendix 6 to ICAO Annex 16 is an acceptable means of compliance with § 34.71. This rule also revises §§ 34.64, 34.82, and 34.89 to clarify that the effective date of Volume II of Annex 16 is February 18, 1982.

International Trade Impact Assessment

The proposed rule represents a clarifying change and will not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage will not be incurred by either U.S. operators abroad or foreign operators in the United States.

Initial Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the proposed rule will not have a significant economic impact on a substantial number of small entities. This is because the proposed rule is clarifying in nature and will not impose any costs.

Environmental Analysis

Section 232 of the Clean Air Act Amendments of 1970 mandates that the FAA issue regulations to ensure compliance with the EPA aircraft emissions standards. The EPA has performed all required environmental analyses prior to the issuance of those standards. Since this rule represents a clarifying correction and will not significantly affect the quality of the human environment, no further analyses is required.

Federalism Implications

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

Conclusion

The FAA has determined that this rule: (1) is not a significant regulatory action under Executive Order 12866; (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 34

Air pollution control, Aircraft.

The Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 34 of the Federal Aviation Regulations as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 1857f–10; 49 U.S.C. 106(g); 49 U.S.C. App. 1348(c), 1354(a), 1421, 1423.

2. Section 34.64 is amended by revising the first sentence to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be done in accordance with Appendices 3 and 5 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

3. Section 34.71 is revised to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated pursuant to § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64. Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

4. Section 34.82 is amended by revising the first sentence to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be done in accordance with Appendix 2 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. * * *

5. Section 34.89 is amended by revising the third sentence and adding new fourth and fifth sentences to read as follows:

§ 34.89 Compliance with smoke emission standards.

* * * An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II—Aircraft Engine Emissions, First Edition, June 1981, effective February 18, 1982. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64.

Issued in Washington, DC on June 22, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–15961 Filed 6–28–95; 8:45 am]

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federal register

Thursday
June 29, 1995

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Recent Flight Experience: Pilot in Command; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 27682; Amdt. No. 61–97]

RIN 2120–AF32

Recent Flight Experience: Pilot in Command

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the Federal Aviation Regulations governing the recent flight experience requirements for pilots in command (PICs). In an earlier amendment to the recent flight experience requirements, PICs employed by a part 121 or part 135 air carrier, while performing flight operations under part 91, 121, or 135 for the certificate holder, were excepted from compliance with part 61 recency requirements. This amendment makes it clear that only PICs who meet the recent experience requirements of part 121 or part 135 are excepted from compliance with part 61 recency requirements. The FAA is adopting this amendment immediately to ensure that all PICs employed by part 121 and part 135 certificate holders remain qualified under either part 61 or under part 121 or part 135.

DATES: *Effective Date:* June 29, 1995.

Comment Date: August 28, 1995.

ADDRESSES: Comments on this amendment should be mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27682, 800 Independence Ave., SW., Washington, DC 20591. Comments delivered must be marked Docket No. 27682. Comments may also be sent electronically to the following Internet address: nprmcmts@mail.hq.faa.gov. Comments may be examined in Room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Project Development Branch, AFS–240, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

This amendment is only a clarification to remove an unintended technical ''loophole'' and does not involve a change in the fundamental currency requirements as historically understood and complied with by pilots. This change to part 61 is being adopted without notice and prior public comment because of that and because it is necessary to preclude any interpretation that might adversely affect safety. The Regulatory Policies of the Department of Transportation (44 FR 11034; February 26, 1979), however, provide that, to the maximum extent possible, Department of Transportation (DOT) operating administrations should provide an opportunity for public comment on regulations issued without prior notice.

Accordingly, interested persons are invited to participate in the rulemaking process by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment are also invited. Comments must include the regulatory docket or amendment number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator. Late filed comments will be considered to the extent practicable. This final rule may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this final rule must submit a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. 27682.'' The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of Final Rule

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Public Affairs (APA–200), 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling the Office of Public Affairs at (202) 267–3484. Communications must identify the docket number of this amendment.

Background

On November 14, 1994, the FAA issued a final rule amending § 61.57 of the Federal Aviation Regulations (59 FR 56385). The FAA amended § 61.57 to provide relief from essentially redundant recency requirements for PICs serving in part 121 and part 135 air carrier operations. The FAA had determined that since both part 121 and part 135 operators already had to meet recency requirements that were at least equivalent to the recency requirements of § 61.57, PICs employed by these operators did not need to show compliance with § 61.57 while they were performing flights for part 121 and part 135 operators. Accordingly, as part of the above final rule, the FAA revised § 61.57 (f) to provide that PICs conducting part 91 flights (e.g., ferry flights, training flights, etc.,) for the part 121 or part 135 operator, did not need to show compliance with § 61.57. The FAA made this decision because these operations were under the control of the certificate holder, and these PICs would be current under the qualification and recency requirements of part 121 or part 135.

Since the publication of the final rule, however, the FAA has become aware that some PICs employed by a part 121 or part 135 operator, conducting only part 91 flights, do not comply with the recency requirements under §§ 121.439 or 135.247. Under the wording of the new rule these pilots would technically not have to comply with the recency requirements of § 61.57. This was not the intent of the FAA. The final rule was designed to provide relief to PICs serving in part 121 and part 135 air carrier operations from unnecessary duplicate recordkeeping only when they already complied with qualification, training, and recency requirements found in parts 121 or 135. This approach would continue the current level of safety.

The FAA did not intend to enable PICs employed by part 121 and part 135 operators, in conducting part 91 flight operations for the part 121 or part 135 operator, to avoid requirements to remain qualified and current under part 61 or under parts 121 or 135. This final rule revises § 61.57(f) to provide that PICs employed by a part 121 or part 135 operator are excepted from compliance with the recency requirements of § 61.57, only if they are qualified under §§ 121.437 or 135.243 and meet the recent experience requirements under §§ 121.439 or 135.247. Otherwise, these PICs must show compliance with the recency requirements of § 61.57 in order to conduct part 91 flights.

Immediate Action

There is good cause for immediate adoption of this amendment as it merely restores the pre-existing rule so as to remove an unintended technical

''loophole'' and does not involve a change in the fundamental recency requirements as understood by pilots. Accordingly, notice and public procedure under 5 U.S.C. 553(b)(B) are unnecessary. Further, immediate action is necessary to avoid any misinterpretation that potentially could result in a significant degradation of safety. Therefore, the FAA is issuing this amendment as a final rule without notice and comment, and finds good cause for making this amendment effective in less than 30 days.

Economic Evaluation

The FAA has determined that this rule is not a ''significant regulatory action'' under the criteria of Executive Order 12866. The FAA, therefore, is not required to prepare a Regulatory Impact Analysis under either the Executive Order or the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034; February 26, 1979). In nonsignificant rulemaking actions, the DOT Regulatory Policies and Procedures require the FAA to prepare a regulatory evaluation, analyzing the economic consequences of proposed regulations and quantifying, to the extent practicable, the estimated costs and anticipated benefits and the impacts of regulations.

The amendment in this final rule is merely a clarification to correct an unintended deletion of recency requirements for part 91 operations and does not change the duties or responsibilities of the aviation community. The amendment does not affect the manner in which pilots become qualified or remain current, as it is understood by pilots. The clarification does not, in economic terms, alter the process of becoming qualified or remaining current by a PIC. Accordingly, there are neither economic costs or benefits associated with this amendment.

International Civil Aviation Organization and Joint Aviation Regulations

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because this final rule reinstates a pre-existing rule that was made partially ineffective in circumstances clearly not intended by Amendment No. 61–96.

Regulatory Flexibility Determination

The final rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. Moreover, only national and regional air carriers, rather than small entities, will be affected by this final rule. Therefore, a substantial number of small entities will not experience a significant economic impact as a result of this final rule.

International Trade Impact Analysis

This final rule will have a negligible impact on trade opportunities for U.S. firms doing business overseas or on foreign firms doing business in the U.S. The final rule primarily affects pilots employed by regional and national air carriers, not businesses involved in the sale of aviation products or services.

Federalism Impact

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this final rule is not a significant regulatory action under Executive Order 12866. The FAA certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this final rule is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule is minimal and accordingly a full economic evaluation is not warranted.

List of Subjects in 14 CFR Part 61

Airmen, Reporting and recordkeeping requirements.

The Amendment

Accordingly, the FAA amends 14 CFR part 61 of the Federal Aviation Regulations as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. Appendix 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

2. Section 61.57(f) is revised to read as follows:

§ 61.57 Recent Flight Experience: Pilot in Command

* * * * *

(f) *Exceptions.* This section does not apply to a pilot in command, employed by a part 121 or 135 air carrier, engaged in a flight operation under part 91, 121, or 135 for the air carrier, if the pilot is in compliance with § § 121.437 and 121.439 or § § 135.243 and 135.247 respectively.

Issued in Washington, D.C., on June 23, 1995.

David R. Hinson,

Administrator.

[FR Doc. 95–15984 Filed 6–28–95; 8:45 am]

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Thursday
June 29, 1995

Part X

Environmental Protection Agency

40 CFR Part 141

National Primary and Secondary Drinking Water Regulations; Analytical Methods for Regulated Drinking Water Contaminants; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[WH–FRL–5349–6]

National Primary and Secondary Drinking Water Regulations: Analytical Methods for Regulated Drinking Water Contaminants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical corrections.

SUMMARY: EPA is amending the National Primary Drinking Water Regulations to correct typographical errors and minor technical mistakes or omissions.

EFFECTIVE DATE: These corrections are effective June 29, 1995.

FOR FURTHER INFORMATION CONTACT: Dr. Jitendra Saxena, Drinking Water Standards Division, Office of Ground Water and Drinking Water (4603), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–9579.

SUPPLEMENTARY INFORMATION: In 1994, EPA promulgated the use of several new methods and updated versions of previously approved methods, and withdrew outdated methods for analysis of contaminants in drinking water (59 FR 62456, December 5, 1994). In 1992, EPA promulgated Maximum Contaminant Level Goals and National Primary Drinking Water Regulations for 23 contaminants (Phase V) (57 FR 31776, July 17, 1992). These regulations contained typographical and minor technical errors which are corrected by this rule.

The Administrative Procedures Act, 5 U.S.C. 553, provides that when an Agency finds good cause, it may issue a rule without first providing notice and comment and make the rule immediately effective. This rule corrects errors and omissions in 40 CFR 141. These revisions are very minor and the Agency believes that neither comment nor a delayed effective date is necessary or in the public interest. Accordingly, EPA finds that there is good cause not to solicit comment on this rule and to have the revisions immediately effective.

Corrections to the Regulation

This rule corrects errors in the regulatory language. These corrections are described below:

This rule corrects an omission from footnote 1 to the table in § 141.21(f)(3) by adding a line about storage temperature for samples. The preamble to the final rule (59 FR 62456, December 5, 1994) states that a footnote specifying coliform sample transit time and temperature would be added at § 141.21(f)(3). However, footnote 1 in the final rule covers transit time but omits transit temperature. The revised footnote encourages but does not require systems to hold samples at 10°C. This rule also corrects footnote 2 to the table in § 141.21(f)(3) by adding ''and false-negative rate'' after ''false-positive rate''. In deciding if lactose broth as commercially available may be used in lieu of lauryl tryptose broth, both false-positive rate and false-negative rates should be less than 10 percent. The false-negative rate was inadvertently omitted.

This rule makes a correction to the table in § 141.23(k)(1) by changing the analytical method for temperature from 2550B to 2550. The method citation 2550B refers to the second paragraph of Method 2550. Because the first paragraph (paragraph A) contains relevant introductory description, the complete method will be cited as 2550. Reference to Standard Method 2550 throughout the regulatory language should be helpful to avoid confusion.

This rule makes correction to the table in § 141.23(k)(4) by deleting footnote 1. The first sentence in the footnote explained an option to ice samples. The second sentence explained a requirement already contained in the method. Because both sentences can be understood from the method itself, the footnote is redundant and is removed. As a result the remaining footnotes and superscripts in the table referring to footnotes are renumbered. This rule also corrects a typographical error in the table by changing NAOH to NaOH in the preservative column for the contaminant cyanide.

This rule corrects the table in § 141.24(h)(18) by changing Dibromochloropropane (DBCP) to 1,2-Dibromo-3-chloropropane (DBCP). The name of the compound as given in the table covers more than one isomer while the method for DBCP actually measures this specific isomer. The correction in no way affects the ease or difficulty in achieving detection limit for DBCP.

This rule corrects an inadvertent deletion that occurred in the December 5, 1995 document. Today's rule restores the trihalomethane (THM) sampling instructions and maximum total trihalomethane (TTHM) potential instructions previously contained in § 141.30. Part III of Appendix C of § 141.30 has been modified to remove reference to EPA methods 501.1 and 501.2 which were withdrawn. The modified text is no longer called Part III of Appendix C; it is now included as § 141.30(g). Section 141.30(c)(1) has also been amended to include reference to the procedure for maximum TTHM potential.

The rule corrects an omission in footnote 2 to the table in § 141.74(a)(1) by adding a line about storage temperature for samples. The revised footnote encourages but does not require systems to hold samples at 10°C. An omission in footnote 2 to the table in § 141.74(a)(1) has been corrected by adding the term ''and false-negative rate'' after ''false-positive rate.'' The rationales for these corrections are provided earlier in the section discussing similar corrections to § 141.21(f)(3).

The introductory part of § 141.74(a)(1) has been revised to refer to § 141.23(k)(1) for temperature measurement methodology. This is being done for clarity. As a result of this revision, EPA is deleting the reference to temperature in the table in § 141.74(a)(1). This rule also corrects several typographical errors in the table in § 141.74(a)(1). The corrections include: Addition of superscript 2 on total coliform and on fecal coliform for reference to footnote 2, moving the numbers 3,4,5 next to total coliform fermentation technique from their current position to superscript position, deleting ''MPN'' from the methodology entitled ''Fecal Coliform MPN Procedure'' consistent with editorial changes in the 18th edition of *Standard Methods for the Examination of Water and Wastewater, 1992*, changing ''Fecal Coliforms'' to ''Fecal Coliform'', and changing Heterot-rophic to Hetero-trophic.

Regulation Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the executive order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

This rule makes only technical and typographical corrections in a previous rule. Therefore, this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of these regulations on small entities. By policy, EPA has decided to consider regulatory alternatives if there is any economic impact on any small entities. This rule does not impose additional requirements, it only makes minor technical and typographical corrections in previous rules.

C. Paperwork Reduction Act

The rule contains no requests for information and consequently is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandate Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector because the rule merely corrects typographical errors and minor technical mistakes or omissions. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Analytical methods, Water supply.

Dated: June 23, 1995.

Dana D. Minerva,

Deputy Assistant Administrator, Office of Water.

For the reasons set forth in the preamble, part 141 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9.

2. Section 141.21 is amended by revising footnotes 1 and 2 to the table in paragraph (f)(3) to read as follows:

§ 141.21 Coliform sampling.

* * * * *

(f) * * *

(3) * * *

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[2] Lactose broth, as commercially available, may be used in lieu of laurel tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

* * * * *

3. In the table in § 141.23(k)(1) the entry ''temperature'' in the contaminant column is amended by revising the entry ''2550B'' to read ''2550'' in the SM column.

4. The table in § 141.23(k)(2) is amended by removing footnote 1 and redesignating footnotes 2 through 4 as footnotes 1 through 3 respectively and by revising the entry for ''cyanide'' to read as follows:

§ 141.23 Inorganic chemical sampling for analytical requirements.

* * * * *

(k) * * *

(2) * * *

Contaminant	Preservative	Container[1]	Time[2]
* * * * * * *			
Cyanide	Cool, 4°C, NaOH to pH>12[3]	P or G	14 days
* * * * * * *			

[1] P=plastic, hard or soft; G=glass, hard or soft.
[2] In all cases, samples should be analyzed as soon after collection as possible.
[3] See method(s) for the information for preservation.

* * * * *

§ 141.24 [Amended]

5. The table in § 141.24(h)(18) is amended by revising the contaminant ''Dibromochloropropane (DBCP)'' to read ''1,2-Dibromo-3-chloropropane (DBCP)''.

6. Section 141.30 is amended by revising the second sentence in paragraph (c)(1) and revising paragraph (e), and adding a new paragraph (g) to read as follows:

§ 141.30 Total trihalomethane sampling, analytical and other requirements.

* * * * *

(c) * * *

(1) * * * The system shall submit the results of at least one sample for maximum TTHM potential using the procedure specified in paragraph (g) of this section. A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system. * * *

* * * * *

(e) Sampling and analyses made pursuant to this section shall be conducted by one of the total trihalomethane methods as directed in § 141.24(e), and the *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994, which is available from NTIS, PB–104766. Samples for TTHM shall be dechlorinated upon collection to prevent further production of trihalomethanes, according to the procedures described in the methods, except acidification is not required if only THMs or TTHMs are to be determined. Samples for maximum TTHM potential should not be dechlorinated or acidified, and should be held for seven days at 25°C (or above) prior to analysis.

* * * * *

(g) The water sample for determination of maximum total trihalomethane potential is taken from a point in the distribution system that reflects maximum residence time. Procedures for sample collection and handling are given in the methods. No reducing agent is added to ''quench'' the chemical reaction producing THMs at the time of sample collection. The intent is to permit the level of THM precursors to be depleted and the concentration of THMs to be maximized for the supply being tested. Four experimental parameters affecting maximum THM production are pH, temperature, reaction time and the presence of a disinfectant residual. These parameters are dealt with as follows: Measure the disinfectant residual at the selected sampling point. Proceed only if a measurable disinfectant residual is present. Collect triplicate 40 ml water samples at the pH prevailing at the time of sampling, and prepare a method blank according to the methods. Seal and store these samples together for seven days at 25°C or above. After this time period, open one of the sample containers and check for disinfectant residual. Absence of a disinfectant residual invalidates the sample for further analysis. Once a disinfectant residual has been demonstrated, open another of the sealed samples and determine total THM concentration using an approved analytical method.

7. Section 141.74 is amended by revising paragraph (a)(1) to read as follows:

§ 141.74 Analytical and monitoring requirements.

(a) * * *

(1) Public water systems must conduct analysis of pH and temperature in accordance with one of the methods listed at § 141.23(k)(1). Public water systems must conduct analysis of total coliforms, fecal coliforms, heterotrophic bacteria, and turbidity in accordance with one of the following analytical methods and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994, which is available at NTIS PB95–104766.

Organism	Methodology	Citation [1]
Total Coliforms [2].	Total Coliform fermentation Technique [3,4,5]	9221A, B, C
	Total coliform membrane filter technique	9222A, B, C
	ONPG-mug test membrane [6]	9223
Fecal Coli forms [2]	Fecal Coliform Procedure [7]	9221E
	Fecal Coliform filter procedure	9222D
Heterotrophic bacteria [2]	Pour Plate method	9215B
Turbidity	Nephelometric method	2130B
	Nephelometric method	180.1 [8]
	Great Lakes instruments	Method 2 [9]

[1] Except where noted, all methods refer to the 18th edition of *Standard Methods for the Examination of Water and Wastewater,* 1992, American Public Health Association, 1015 Fifteenth Street NW, Washington, D.C. 20005.

[2] The time from sample collection to initiation of analysis may not exceed 8 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[3] Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false positive rate and false negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4] Media should cover inverted tubes at least one-half to two-thirds after the sample is added.

[5] No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6] The ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[7] A–1 Broth may be held up to three months in a tightly closed screwcap tube at 4°C.

[8] ''Methods for the Determination of Inorganic Substances in Environmental Samples'', EPA–600/R–93–100, August 1993. Available at NTIS, PB94–121811.

[9] GLI Method 2, ''Turbidity'', November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, Wisconsin 53223.

[FR Doc. 95–16004 Filed 6–28–95; 8:45 am]

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